

KEEGAN WERLIN LLP

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March 21, 2006

Mary L. Cottrell, Secretary  
Department of Telecommunications and Energy  
One South Station, 2<sup>nd</sup> Floor  
Boston, MA 02110

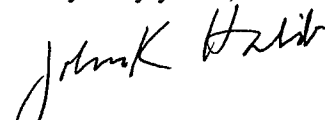
Re: NSTAR Gas Company, D.T.E. 06-10

Dear Secretary Cottrell:

On behalf of NSTAR Gas Company (the "Company"), please find attached the Company's responses to the First Set of Information Requests of the Attorney General in the above-referenced proceeding. Confidential responses relating to these information requests are being filed under separate cover with the Hearing Officer and the Attorney General only, under seal.

Thank you for your consideration and assistance in this matter.

Very truly yours,

  
John K. Habib

Enclosures

cc: Carol Pieper, Hearing Officer  
Jamie Tosches, Assistant Attorney General  
Service List

Information Request AG-1-1

Please provide copies of all documents relating to the request for proposals ("RFP") associated with the Company's competitive solicitation process to procure gas supply in this matter, D.T.E. 06-10. Include copies of all the initial request letter(s) sent to each bidder, any updates in those letters, original RFPs, modification or amendments to the RFPs, and any responses sent by the RFP recipients to the Company. Include in this response all evaluations, studies, reports, correspondence, e-mails, notes, presentation materials, and work papers related to the RFP response.

Response

**CONFIDENTIAL ATTACHMENTS**

Please find attached the following documents:

- Attachment AG-1-1 (a) E-mail correspondence
- Attachment AG-1-1 (b) E-mail correspondence  
**CONFIDENTIAL**
- Attachment AG-1-1 (c) Responses to RFP  
**CONFIDENTIAL**
- Attachment AG-1-1 (d) Workpaper  
**CONFIDENTIAL**
- Attachment AG-1-1 (e) Bid evaluation spreadsheets  
**CONFIDENTIAL**
- Attachment AG-1-1 (f) Bid evaluation spreadsheets  
**CONFIDENTIAL**
- Attachment AG-1-1 (g) Presentation to Senior Management  
**CONFIDENTIAL**



NSTAR Gas RFP for Replacement ANE Supplies Beginning November 1, 2006 - Message (Rich Text)

File Edit View Insert Format Tools Actions Help

Reply Reply to All Forward Print Attachments

Sent: Fri 4/15/2005 10:11 AM

From: Gowen, Max  
 To: Daly, James  
 Cc: Johnson, Kevin  
 Bcc: Ginger Richman (gprichman@nstarresources.com); Hector Miranda; Ian Johnston (ian.johnston@amerenergy.com); Jarrod Hodson (jrhod@chevronenergy.com); Julia Schiavi (jschiavi@hess.com); Jeff Brant (jeff.brant@conocophillips.com); Jim Corrigan (jcorri@selectenergy.com); Joe Murphy (jmurphy@ingra.com); John Peyton (jpeyton@aep.com); Mike Freeman (mfreeman@net-tp.com); Paul Mugridge; Katherine Daly (kathy.daly@bp.com); Mark Hays (mhays@souwest-energy.com); Martin Minnaugh (martin\_minnaugh@dom.com); Russ Mahan (russell.mahan@elbaso.com); Scott Lashelle (slashelle@sempratrading.com); Pete Krygier (pete.krygier@nexusinc.com); Renato Pereira (rpereira@duke-energy.com);

Subject: NSTAR Gas RFP for Replacement ANE Supplies Beginning November 1, 2006

NSTAR Gas is issuing this RFP to solicit bids for firm supplies to be delivered to NSTAR's Worcester, MA Tennessee station 020109, beginning November 1, 2006. NSTAR currently purchases 4,563 dth/day at Waddington NY from Alberta Northeast (ANE) and uses its firm contract on IGT to move the gas to the TGP system at Wright, NY and its firm contract on TGP to move the gas to Worcester, MA. This RFP is intended to replace the ANE contract when it terminates in November 2006. NSTAR plans to assign its existing IGT and TGP transportation contracts to the selected supplier at the full 100% rates and take delivery of the full quantity at the Worcester station. NSTAR is willing to consider a contract term for this supply that would extend from November 2006 to November 2011.

The attached RFP provides the specific information regarding NSTAR's request.

Responses to the RFP are due on May 13, 2005 by 4:00 PM, as stated in the RFP.

If you have questions regarding the RFP, please contact me at 781.441.3556 or by e-mail. Please note that I will be on vacation during the week of April 18 through 22. If you have questions during this week, you may contact Keven Johnson at 781.441.8605 or e-mail him at kevin\_johnson@nstaronline.com.

If in answering questions for any potential bidder, we determine that the response to the question is important to all bidders, we will circulate a written response to all potential bidders via e-mail.

Please note that NSTAR will be issuing another RFP in June 2005 for gas supplies and/or portfolio management services, similar to the RFP that we sent out in June 2004. It is expected that the June RFP will result in contracts covering the period from November 1, 2005 through October 31, 2006.



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 05 RFP.doc...

Sincerely,

Max A. Gowen  
 Senior Energy Supply Analyst  
 NSTAR Electric & Gas Corp.  
 One NSTAR Way, NE220  
 Westwood, MA 02090-9230

#1 373

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Reply Reply to All Forward

NSTAR Gas RFP for Replacement ANE Supplies Beginning November 1, 2006 - Message (Rich Text)

Sent: Fri 4/15/2005 10:11 AM

From: Gowen, Max

To: Daly, James

Cc: Johnson, Kevin

Bcc: Katherine Daly (kdaly@bp.com); Mark Hays (mhays@souwest-energy.com); Martin Minnaugh (martin\_minnaugh@dom.com); Mike Freeman (mfreeman@net-lp.com); Paul Muiridge; Pete Krygier (pete\_krygier@enxinc.com); Renato Pereira (rpereira@duke-energy.com); Russ Mahan (russell.mahan@elpaso.com); Scott Lashelle (slashelle@sempratrading.com); Scott Proppit (sproppit@tmv-gas.com); Steve Durio (sdurio@sequentenergy.com); Steve Husband; Terry O'Hara (terry\_o'hara@hexaninc.com); Terry Pierce (tpierce@onenationenergy.com); Todd McDonald (todd.mcdonald@emerenergy.com); Wanda Marcell (wanda\_marcell@enadarko.com)

Subject: NSTAR Gas RFP for Replacement ANE Supplies Beginning November 1, 2006

NSTAR Gas is issuing this RFP to solicit bids for firm supplies to be delivered to NSTAR's Worcester, MA Tennessee station Q201D9, beginning November 1, 2006. NSTAR currently purchases 4,553 dth/day at Waddington NY from Alberta Northeast (ANE) and uses its firm contract on IGT to move the gas to the TGP system at Wright, NY and its firm contract on TGP to move the gas to Worcester, MA. This RFP is intended to replace the ANE contract when it terminates in November 2006. NSTAR plans to assign its existing IGT and TGP transportation contracts to the selected supplier at the full 100% rates and take delivery of the full quantity at the Worcester station. NSTAR is willing to consider a contract term for this supply that would extend from November 2006 to November 2011.

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Sincerely,

Max A. Gowen  
Senior Energy Supply Analyst  
NSTAR Electric & Gas Corp.  
One NSTAR Way, NE220  
Westwood, MA 02090-9230

Final Version April  
US RFP.doc...

Start

05-04 ANE Replacement ...

NSTAR Gas RFP for Re...

Document1 - Microsoft ...

Microsoft Excel

8:28 AM

2

Gowen, Max

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**From:** Hector\_Miranda@cargill.com  
**Sent:** Friday, April 15, 2005 10:26 AM  
**To:** Max\_Gowen@nstaronline.com  
**Subject:** RE: NSTAR Gas RFP for Replacement ANE Supplies Beginning November 1, 2006



BDY.RTF (15 KB)

Hi Max,

Is this transport segment avail for this up coming winter or are you under agreement through 4/1/06?

Thanks for taking some time to meet with us last week. We look forward to working with you in the future.

Hector

-----Original Message-----

From: Max\_Gowen@nstaronline.com [mailto:Max\_Gowen@nstaronline.com]  
Sent: Friday, April 15, 2005 9:11 AM  
To: James\_Daly@nstaronline.com  
Cc: Kevin\_Johnson@nstaronline.com  
Subject: NSTAR Gas RFP for Replacement ANE Supplies Beginning November 1, 2006

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<<Final Version April 05 RFP.doc>>  
Sincerely,

Max A. Gowen  
Senior Energy Supply Analyst  
NSTAR Electric & Gas Corp.  
One NSTAR Way, NE220  
Westwood, MA 02090-9230  
Phone: 781 441-3556  
Fax: 781 441-8167

\*\*\*\*\*  
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**Gowen, Max**

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**From:** Sharon T Crow [crows@dteenergy.com]  
**Sent:** Friday, April 15, 2005 2:49 PM  
**To:** Gowen, Max  
**Subject:** RFP for supplies at Dawn/Waddington

Max,

Per our discussion two weeks ago, I was wondering if NStar has put together its RFP for supplies pertaining to your portion of the ANE allotment. I have been in receipt of the general RFP from the rest of the representatives and since you stated that NStar would be doing its own I thought I would check on the status.

Please feel free to give me a call to discuss further. Have a great weekend, hope your weather is nice like ours!

Sharon Crow  
East Origination  
DTE Energy Trading  
734-887-2135  
AOL IM: hockeymumsrule

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Gowen, Max

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**From:** Peyrot, Claude [CPeyrot@spragueenergy.com]  
**Sent:** Tuesday, April 19, 2005 8:14 AM  
**To:** 'max\_gowen@nstaronline.com'  
**Subject:** NSTAR Gas RFP for Replacement ANE Supplies

A simple question for you this morning. Are any of the transportation agreements involved in the RFP "7C" agreements?

Thanks,

Claude Peyrot  
Director, Natural Gas Origination  
Sprague Energy

Phone: 603-430-7254  
Cell: 603-817-5779  
AIM: Peyrot82

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**Gowen, Max**

---

**From:** Johnson David [DJohnson@NJResources.com]  
**Sent:** Wednesday, May 04, 2005 3:13 PM  
**To:** 'Gowen, Max'  
**Subject:** RE: NSTAR Gas RFP for Replacement ANE Supplies Beginning November 1, 2006

Max,

A couple of questions regarding the RFP for Waddington Supply:

1. Could you clarify the statement in Section C of the RFP: "In order for NSTAR to purchase summer quantities under this replacement contract, the delivered cost under this agreement must be less than alternatives available to the Company."? I am not sure what alternatives are available to NSTAR. Furthermore, could you clarify if it is NSTAR's preference to receive winter only pricing in response to this RFP?
2. Could you clarify the statement in Section F of the RFP: "As noted above, the Company in the past has been able to purchase these quantities on a 365-day basis and would prefer to have the gas priced such that it is economical to maintain 100% purchases." What type of daily flexibility does NSTAR require for this supply, and how does NSTAR determine if the gas is economical to maintain 100% purchases?

If you think that the answers to these questions would be better explained over the phone, please let me know what time would be good for you to discuss. Thanks.

Dave

-----Original Message-----

**From:** Gowen, Max [mailto:Max\_Gowen@nstaronline.com]  
**Sent:** Friday, April 15, 2005 10:11 AM  
**To:** Daly, James  
**Cc:** Johnson, Kevin  
**Subject:** NSTAR Gas RFP for Replacement ANE Supplies Beginning November 1, 2006

NSTAR Gas is issuing this RFP to solicit bids for firm supplies to be delivered to NSTAR's Worcester, MA Tennessee station 020109, beginning November 1, 2006. NSTAR currently purchases 4,553 dth/day at Waddington NY from Alberta Northeast (ANE) and uses its firm contract on IGT to move the gas to the TGP system at Wright, NY and its firm contract on TGP to move the gas to Worcester, MA. This RFP is intended to replace the ANE contract when it terminates in November 2006. NSTAR plans to assign its existing IGT and TGP transportation contracts to the selected supplier at the full 100% rates and take delivery of the full quantity at the Worcester station. NSTAR is willing to consider a contract term for this supply that would extend from November 2006 to November 2011.

The attached RFP provides the specific information regarding NSTAR's request.

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If you have questions regarding the RFP, please contact me at 781 441-3556 or by e-mail. Please note that I will be on vacation during the week of April 18 through 22. If you have questions during this week,

you may contact Keven Johnson at 781 441-8605 or e-mail him at kevin\_johnson@nstaronline.com.

If in answering questions for any potential bidder, we determine that the response to the question is important to all bidders , we will circulate a written response to all potential bidders via e-mail.

Please note that NSTAR will be issuing another RFP in June 2005 for gas supplies and/or portfolio management services, similar to the RFP that we sent out in June 2004. It is expected that the June RFP will result in contracts covering the period from November 1, 2005 through October 31, 2006.

<<Final Version April 05 RFP.doc>>

Sincerely,

Max A. Gowen  
Senior Energy Supply Analyst  
NSTAR Electric & Gas Corp.  
One NSTAR Way, NE220  
Westwood, MA 02090-9230  
Phone: 781 441-3556  
Fax: 781 441-8167

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**Gowen, Max**

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**From:** Gowen, Max  
**Sent:** Wednesday, May 04, 2005 5:01 PM  
**To:** 'Johnson David'  
**Subject:** RE: NSTAR Gas RFP for Replacement ANE Supplies Beginning November 1, 2006

Dave:

The 4,500 dth/day is a small quantity for even NSTAR. Under the current ANE contract as you know, we have high fixed costs and relatively low commodity costs. We do not have a problem with taking the 4,500 under a 365-day basis, if the delivered commodity price is competitive with Gulf Coast gas delivered on TGP Zone 6.

Taking the 4,500 dth/day for the 151-day winter season is a "no-brainer". If the summer delivered commodity cost of the 4,500 was competitive with Gulf Coast gas on TGP, we will take it. If it were more expensive than Gulf Coast gas, delivered to TGP Zone 6, we would not take it.

Daily volumetric flexibility is not important to NSTAR. We would likely take the gas 151 days in the winter. On warm days in November or March, we would not swing on the 4,500 dth, we would swing on our domestic supplies. In the summer, we would be inclined to nominate it in competition with our TGP baseload summer quantities. If it were less expensive than TGP FOM gas, the TGP FOM quantity would be reduced by 4,500 dth. Otherwise we would not take it. We do not need daily pricing flexibility for these small volumes.

To an extent, this supply is competing with gas our ANE colleagues who are purchasing at Dawn and transporting Union and TCPL contracts to Waddington and moving to their gate stations with their existing IGT and TGP contracts. We expect to see some bids based on a Dawn index with adders to cover transportation costs to our city gate, along with other alternatives.

I hope this helps.

Call me if you need further clarification.

Max Gowen  
781 441-3556

---

**From:** Johnson David [mailto:DJohnson@NJResources.com]  
**Sent:** Wednesday, May 04, 2005 3:13 PM  
**To:** 'Gowen, Max'  
**Subject:** RE: NSTAR Gas RFP for Replacement ANE Supplies Beginning November 1, 2006

Max,

A couple of questions regarding the RFP for Waddington Supply:

1. Could you clarify the statement in Section C of the RFP: "In order for NSTAR to purchase summer quantities under this replacement contract, the delivered cost under this agreement must be less than alternatives available to the Company."? I am not sure what alternatives are available to NSTAR. Furthermore, could you clarify if it is NSTAR's preference to receive winter only pricing in response to this RFP?
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If you think that the answers to these questions would be better explained over the phone, please let me know what time would be good for you to discuss. Thanks.

Dave

-----Original Message-----

**From:** Gowen, Max [mailto:Max\_Gowen@nstaronline.com]

**Sent:** Friday, April 15, 2005 10:11 AM

**To:** Daly, James

**Cc:** Johnson, Kevin

**Subject:** NSTAR Gas RFP for Replacement ANE Supplies Beginning November 1, 2006

NSTAR Gas is issuing this RFP to solicit bids for firm supplies to be delivered to NSTAR's Worcester, MA Tennessee station 020109, beginning November 1, 2006. NSTAR currently purchases 4,553 dth/day at Waddington NY from Alberta Northeast (ANE) and uses its firm contract on IGT to move the gas to the TGP system at Wright, NY and its firm contract on TGP to move the gas to Worcester, MA. This RFP is intended to replace the ANE contract when it terminates in November 2006. NSTAR plans to assign its existing IGT and TGP transportation contracts to the selected supplier at the full 100% rates and take delivery of the full quantity at the Worcester station. NSTAR is willing to consider a contract term for this supply that would extend from November 2006 to November 2011.

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<<Final Version April 05 RFP.doc>>

Sincerely,

Max A. Gowen  
Senior Energy Supply Analyst  
NSTAR Electric & Gas Corp.  
One NSTAR Way, NE220

Westwood, MA 02090-9230

Phone: 781 441-3556

Fax: 781 441-8167

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7

**Gowen, Max**

---

**From:** Gowen, Max  
**Sent:** Thursday, May 05, 2005 2:42 PM  
**To:** 'Sharon T Crow'  
**Cc:** Johnson, Kevin  
**Subject:** RE: RFP for supplies at Dawn/Waddington

Sharon:

The person to work with to get the contract established will be Kevin Johnson. He will be working with our internal attorney to work out the terms of the contract. I will back Kevin up as necessary.

Once we get a contract in place there will be a different Contract Administrator who will handle the processing of invoices.

I have copied Kevin on this e-mail so that you will have his contact information. His phone number is 781 441-8605.

Regards,

Max Gowen

---

**From:** Sharon T Crow [mailto:crows@dteenergy.com]  
**Sent:** Thursday, May 05, 2005 10:55 AM  
**To:** Gowen, Max  
**Cc:** James Buck  
**Subject:** RE: RFP for supplies at Dawn/Waddington

Max,

Could you please provide me with a Contract Administration contact in order to process documents between our two companies?

Thanks,

Sharon

Please make sure you are familiar with the NSTAR Information Systems Acceptable Use Policy.

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**Gowen, Max**

---

**From:** Gowen, Max  
**Sent:** Monday, May 09, 2005 4:33 PM  
**To:** 'Johnston, Ian'  
**Subject:** RE: RFP Clarifications

Ian:

- 1) We would consider a TGP Zone 6 index. We would likely prefer a NYMEX basis to TGP Zone 6. Feel free to offer a choice.
- 2) The reality of the situation is that the DCQ at Worcester does vary according to the IGT and TGP fuel factors. We start off with 4,553 dth at Waddington and transport as much as we can to Worcester. I believe that when the contracts were first signed, there was no fuel on IGT. If a supplier found a way to guarantee delivery of 4,500 dth/day to our Worcester meter, it would be preferred if it could be done at a competitive price. We expect that suppliers will likely offer the 4,553 dth Waddington quantity, adjusted for IGT and TGP fuel.
- 3) At the present time, we anticipate that we will continue to need the 4,500 dth/day delivered to our gate station beyond the current terms of the IGT and TGP contracts. Therefore, we expect that we would not do a permanent release. The only way we would do a permanent release would be if we determined that there was a long-term lower cost way to get the same quantity of gas delivered to Worcester. We will likely do another RFP during the last year or so of this contract to replace the supply we contract for through the current process.

If you have further questions, do not hesitate to ask.

Regards,

Max

---

**From:** Johnston, Ian [mailto:Ian.Johnston@EmeraEnergy.com]  
**Sent:** Monday, May 09, 2005 3:27 PM  
**To:** Max Gowen (E-mail)  
**Subject:** RFP Clarifications

Hi Max,

Could you please clarify for us the following questions:

- 1) Would you consider buying gas on a basis to Inside FERC Tennessee, zone 6 delivered? Would NYMEX basis be a preferred pricing method?
- 2) Is the delivered DCQ variable at Worcester? In other words, is the delivered DCQ a function of fuel on IGT and TGP using the assigned IGT and TGP capacities?
- 3) Is the assignment of the IGT and TGP a permanent 5 yr assignment?

Thanks,





**Ian R.B. Johnston**  
*Director, Origination*  
*Emera Energy Services*  
Emera Energy Inc.  
Phone: (902) 474-7889  
Fax: (902) 428-6762  
Cell: (902) 229-3068  
ian.johnston@emeraenergy.com

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**Gowen, Max**

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**From:** Johnston, Ian [Ian.Johnston@EmeraEnergy.com]  
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**To:** Max Gowen (E-mail)  
**Subject:** RFP Clarifications

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- 3) Is the assignment of the IGT and TGP a permanent 5 yr assignment?

Thanks,



**Ian R.B. Johnston**  
Director, Origination  
Emera Energy Services  
Emera Energy Inc.  
Phone: (902) 474-7889  
Fax: (902) 428-6762  
Cell: (902) 229-3068  
ian.johnston@emeraenergy.com

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**Gowen, Max**

**From:** Sharon T Crow [crows@dteenergy.com]  
**Sent:** Tuesday, May 10, 2005 9:47 AM  
**To:** Gowen, Max  
**Subject:** RE: RFP for supplies at Dawn/Waddington

Max,

Are y'all doing much day business as well?

Sharon

☐ "Gowen, Max" <Max\_Gowen@nstaronline.com>

<p><b>"Gowen, Max"</b>  <b>&lt;Max_Gowen@nstaronline.com&gt;</b></p> <p>05/05/2005 02:42 PM</p>	<p>To: Sharon T Crow' &lt;crows@dteenergy.com&gt;  cc: "Johnson, Kevin"  &lt;Kevin_Johnson@nstaronline.com&gt;</p> <p>Subject: RE: RFP for supplies at Dawn/Waddington</p>
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---

**From:** Sharon T Crow [mailto:crows@dteenergy.com]  
**Sent:** Thursday, May 05, 2005 10:55 AM  
**To:** Gowen, Max  
**Cc:** James Buck  
**Subject:** RE: RFP for supplies at Dawn/Waddington

Max,

Could you please provide me with a Contract Administration contact in order to process documents between our two companies?

Thanks,

Sharon

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**Gowen, Max**

---

**From:** Gowen, Max  
**Sent:** Tuesday, May 10, 2005 11:25 AM  
**To:** 'Sharon T Crow'  
**Subject:** RE: RFP for supplies at Dawn/Waddington

Sharon:

We currently have a portfolio manager that handles our daily purchases for our customers, based on our daily nominations. We will be sending out a RFP for the Portfolio Manager service in mid-June. The contract that will be awarded in response to that RFP will likely run from Nov 05 to Oct 06. We can put you on the list to receive the RFP.

In cold winters, we will purchase some city gate supplies to displace some of our system LNG if we need to husband our LNG supplies.

In the summer, the gas we need for liquefaction is outside the portfolio manager's contract so we buy it on the spot market as a city gate supply. The plant generally uses between 15,000 and 17,000 dth/day. We usually split it between Tennessee and Algonquin.

Kevin is the person who handles the short term purchasing.

Let me know if you have any questions.

Regards,

Max Gowen

---

**From:** Sharon T Crow [mailto:crows@dteenergy.com]  
**Sent:** Tuesday, May 10, 2005 9:47 AM  
**To:** Gowen, Max  
**Subject:** RE: RFP for supplies at Dawn/Waddington

Max,

Are y'all doing much day business as well?

Sharon

"Gowen, Max" <Max\_Gowen@nstaronline.com>

"Gowen, Max"  
 <Max\_Gowen@nstaronline.com>

05/05/2005 02:42 PM

To: Sharon T Crow' <crows@dteenergy.com>  
 cc: Johnson, Kevin"  
 <Kevin\_Johnson@nstaronline.com>  
 Subject: RE: RFP for supplies at Dawn/Waddington

Sharon:

The person to work with to get the contract established will be Kevin Johnson. He will be

3/10/2006

working with our internal attorney to work out the terms of the contract. I will back Kevin up as necessary.

Once we get a contract in place there will be a different Contract Administrator who will handle the processing of invoices.

I have copied Kevin on this e-mail so that you will have his contact information. His phone number is 781 441-8605.

Regards,

Max Gowen

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**Gowen, Max**

---

Thanks Max, I look forward to receiving the RFP and I will pass along the information to our day traders. Have a great day!

Sharon

✉ "Gowen, Max" <Max\_Gowen@nstaronline.com>

"Gowen, Max"  
<Max\_Gowen@nstaronline.com>

To: Sharon T Crow' <crows@dteenergy.com>  
cc

Subject: RE: RFP for supplies at Dawn/Waddington

05/10/2005 11:24 AM

Sharon:

We currently have a portfolio manager that handles our daily purchases for our customers, based on our daily nominations. We will be sending out a RFP for the Portfolio Manager service in mid-June. The contract that will be awarded in response to that RFP will likely run from Nov 05 to Oct 06. We can put you on the list to receive the RFP.

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✉ "Gowen, Max" <Max\_Gowen@nstaronline.com>



"Gowen, Max"  
<Max\_Gowen@nstaronline.com>

05/05/2005 02:42 PM

Subject:

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*graycol.gif*) (See attached file: *ecblank.gif*)

21

**Gowen, Max**

---

**From:** djones15@txu.com  
**Sent:** Friday, May 13, 2005 2:14 PM  
**To:** max\_gowen@nstaronline.com  
**Subject:** TXU's Response



Untitled Attachment

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**Gowen, Max**

---

**From:** Sharon T Crow [crows@dteenergy.com]  
**Sent:** Monday, May 16, 2005 12:43 PM  
**To:** Gowen, Max  
**Subject:** RE: RFP for supplies at Dawn/Waddington



Untitled Attachment graycol.gif (238 B) ecblank.gif (178 B)

**Gowen, Max**

---

Max,

Do either yourself or Kevin have an AOL IM address so I can inquire about day purchases?

Sharon

"Gowen, Max" <Max\_Gowen@nstaronline.com>

"Gowen, Max"  
<Max\_Gowen@nstaronline.com>

To: Sharon T Crow' <crows@dteenergy.com>

cc

Subject: RE: RFP for supplies at Dawn/Waddington

05/10/2005 11:24 AM

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**To:** Gowen, Max

**Subject:** RE: RFP for supplies at Dawn/Waddington

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Sharon

"Gowen, Max" <Max\_Gowen@nstaronline.com>

"Gowen, Max"  
<Max\_Gowen@nstaronline.com>

05/05/2005 02:42 PM

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Max Gowen

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[mailto:[crows@dteenergy.com](mailto:crows@dteenergy.com)]  
**Sent:** Thursday, May 05, 2005 10:55 AM  
**To:** Gowen, Max  
**Cc:** James Buck  
**Subject:** RE: RFP for supplies at Dawn/Waddington

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**Gowen, Max**

---

**From:** Trotta, Alan  
**Sent:** Friday, May 27, 2005 2:23 PM  
**To:** 'David.Dahlem@constellation.com'  
**Subject:** Gas RFP

David,  
Constellation has been selected as a finalist in NSTAR's April 15, 2005 gas RFP process. Specifically, NSTAR would like to discuss Constellation's 3 and 5 year 365 day service offerings. I will contact you next week to discuss the next steps in the process.  
Thanks  
Alan Trotta



**Gowen, Max**

---

**From:** Trotta, Alan  
**Sent:** Friday, May 27, 2005 1:30 PM  
**To:** 'Sharon T Crow'  
**Subject:** Gas RFP

Sharon,  
I regret to inform you that DTE has not been selected as a finalist in NSTAR's April 15, 2005 gas RFP. Thank you for your interest and please be on the lookout for a new RFP for portfolio management that will be issued by NSTAR sometime during the next two weeks.  
Thanks  
Alan Trotta

**Gowen, Max**

---

**From:** Trotta, Alan  
**Sent:** Friday, May 27, 2005 1:34 PM  
**To:** 'rfpereira@duke-energy.com'  
**Subject:** Gas RFP

Renato,

I regret to inform you that Duke has not been selected as a finalist in NSTAR's April 15, 2005 gas RFP. Thank you for your interest and please be on the lookout for a new RFP for portfolio management that will be issued by NSTAR sometime during the next two weeks.

Thanks

Alan Trotta

**Gowen, Max**

---

**From:** Trotta, Alan  
**Sent:** Friday, May 27, 2005 1:30 PM  
**To:** 'Ian.Johnston@EmeraEnergy.com'  
**Subject:** Gas RFP

Ian,

I regret to inform you that Emera has not been selected as a finalist in NSTAR's April 15, 2005 gas RFP. Thank you for your interest and please be on the lookout for a new RFP for portfolio management that will be issued by NSTAR sometime during the next two weeks.

Thanks

Alan Trotta

**Gowen, Max**

---

**From:** Trotta, Alan  
**Sent:** Friday, May 27, 2005 1:28 PM  
**To:** 'JSchiavi@hess.com'  
**Subject:** Gas RFP

Julia,

I regret to inform you that Amerada Hess has not been selected as a finalist in NSTAR's April 15, 2005 gas RFP. Thank you for your interest and please be on the lookout for a new RFP for portfolio management that will be issued by NSTAR sometime during the next two weeks.

Thanks

Alan Trotta

**Gowen, Max**

---

**From:** Trotta, Alan  
**Sent:** Friday, May 27, 2005 2:20 PM  
**To:** 'DJohnson@NJResources.com'  
**Subject:** Gas RFP

David,  
NJR Energy Services has been selected as a finalist in NSTAR's April 15, 2005 gas RFP process. Specifically, NSTAR is interested in discussing NJRES' Waddington offer. We are currently reviewing NJR's financials. I will contact you next week to discuss the next steps in the process. I can be reached at 781-441-8178 if you'd like to discuss the proposal.  
Thanks  
Alan Trotta

**Gowen, Max**

---

**From:** Trotta, Alan  
**Sent:** Friday, May 27, 2005 2:32 PM  
**To:** 'Molina, Diego'  
**Subject:** Gas RFP

Diego,

I regret to inform you that Coral was not selected as a finalist for NSTAR's April 15, 2005 gas RFP. Please be on the lookout for NSTAR's upcoming RFP for portfolio management which will be issued sometime during the next two weeks.

Thanks

Alan Trotta

**Gowen, Max**

---

**From:** Trotta, Alan  
**Sent:** Friday, May 27, 2005 1:34 PM  
**To:** 'CPEYROT@SPRAGUEENERGY.COM'  
**Subject:** Gas RFP

Claude,  
I regret to inform you that Sprague has not been selected as a finalist in NSTAR's April 15, 2005 gas RFP. Thank you for your interest and please be on the lookout for a new RFP for portfolio management that will be issued by NSTAR sometime during the next two weeks.  
Thanks  
Alan Trotta

**Gowen, Max**

---

**From:** Trotta, Alan  
**Sent:** Friday, May 27, 2005 3:42 PM  
**To:** 'Martin\_Minnaugh@dom.com'  
**Subject:** Gas RFP

Martin,  
Virginia Power Energy Marketing has been selected to the "short list" of finalists for NSTAR's April 15, 2005 RFP. I will contact you next week to discuss the next steps in the process.  
Thanks  
Alan Trotta



27

**Gowen, Max**

---

**From:** Johnson David [DJohnson@NJResources.com]  
**Sent:** Thursday, June 09, 2005 4:51 PM  
**To:** 'Trotta, Alan'; Johnson David  
**Cc:** Gowen, Max  
**Subject:** RE: Offer Confirmation

Alan and Max,

The only change that I noticed is that NJRES' original offer was for 5 years beginning in November 2006 and our pricing is based upon that term. The confirmation has 3 years. Max and I spoke earlier today and he indicated that the 5-year term would be your preference as well. Please let me know if this is correct and we can adjust the sheet accordingly.

Thanks  
Dave Johnson

-----Original Message-----

**From:** Trotta, Alan [mailto:Alan\_Trotta@nstaronline.com]  
**Sent:** Thursday, June 09, 2005 11:03 AM  
**To:** 'DJohnson@NJResources.com'  
**Cc:** Gowen, Max  
**Subject:** Offer Confirmation

David,

Attached is a non-binding confirmation of NJR's offer to NSTAR Gas Company. Please review this and indicate whether or not our understanding of NJR's proposal is accurate and complete. Also, we understand that parties may have to refresh offer prices between now and our final decision date (currently planned for 6/17/05). If at any time your offer price changes, please note it on the sheet and email it to Max Gowen (max\_gowen@nstaronline.com) and myself.

Again, this is simply a non-binding confirmation of offer terms. If NJR is selected as the winning bidder, we will expand this document into a letter of intent/term sheet and have both parties execute.

Thanks  
Alan Trotta

<<050608 confirmation - NJR.doc>>

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**Gowen, Max**

**From:** Gowen, Max  
**Sent:** Thursday, June 09, 2005 6:46 PM  
**To:** 'Johnson David'; Trotta, Alan  
**Cc:** Gowen, Max  
**Subject:** RE: Offer Confirmation

Dave:

We are definately interested in a 5 year deal. Please clarify how years 4 and 5 would be priced and identify any other changes or clifications that are necessary.

Max

---

**From:** Johnson David [mailto:DJohnson@NJResources.com]  
**Sent:** Thursday, June 09, 2005 4:51 PM  
**To:** 'Trotta, Alan'; Johnson David  
**Cc:** Gowen, Max  
**Subject:** RE: Offer Confirmation

Alan and Max,

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Thanks  
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-----Original Message-----

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Alan Trotta

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**Gowen, Max**

---

**From:** Trotta, Alan  
**Sent:** Friday, June 10, 2005 7:26 AM  
**To:** 'Johnson David'; Trotta, Alan  
**Cc:** Gowen, Max  
**Subject:** RE: Offer Confirmation

I apologize David. My mistake on the typo. We understand that your offer is for 5 years, it was just a typo on the sheet.  
Thanks  
Alan

---

**From:** Johnson David [mailto:DJohnson@NJResources.com]  
**Sent:** Thursday, June 09, 2005 4:51 PM  
**To:** 'Trotta, Alan'; Johnson David  
**Cc:** Gowen, Max  
**Subject:** RE: Offer Confirmation

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**Gowen, Max**

---

**From:** Trotta, Alan  
**Sent:** Tuesday, June 14, 2005 2:48 PM  
**To:** 'Johnson David'; Trotta, Alan  
**Cc:** Gowen, Max  
**Subject:** RE: Offer Confirmation

Dave,

On Thursday afternoon, we will be looking for either a refresh of NJR's offer or an indication that the offer stands as-is. We have scheduled a meeting with our internal risk committee for Friday at 3PM and plan on bringing a recommendation to that meeting. Please send something to Max and myself Thursday afternoon. We will perform our final evaluation Friday morning.

Thanks  
Alan

---

**From:** Johnson David [mailto:DJohnson@NJResources.com]  
**Sent:** Thursday, June 09, 2005 4:51 PM  
**To:** 'Trotta, Alan'; Johnson David  
**Cc:** Gowen, Max  
**Subject:** RE: Offer Confirmation

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Gowen, Max

---

**From:** Craig\_Adams@cargill.com  
**Sent:** Thursday, June 16, 2005 4:44 PM  
**To:** Max\_Gowen@nstaronline.com  
**Subject:** RE: Historic Load Data

Thanks, Max. Is everything clear on the 5-yr ANE replacement deal?

-----Original Message-----

From: Max\_Gowen@nstaronline.com [mailto:Max\_Gowen@nstaronline.com]  
Sent: Thursday, June 16, 2005 3:38 PM  
To: Adams, Craig /mtka  
Subject: RE: Historic Load Data

Craig:

Here is the data you requested.

Max

-----Original Message-----

From: Craig\_Adams@cargill.com [mailto:Craig\_Adams@cargill.com]  
Sent: Thursday, June 16, 2005 4:03 PM  
To: alan\_trotta@nstaronline.com; max\_gowen@nstaronline.com  
Subject: Historic Load Data

Gentlemen:

We are working on you portfolio management RFP. Could you send us the package of historic load and weather information?

Thanks -- DCA

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**Gowen, Max**

---

**From:** Gowen, Max  
**Sent:** Thursday, June 16, 2005 4:56 PM  
**To:** 'Craig\_Adams@cargill.com'  
**Subject:** RE: Historic Load Data

Craig:

I did not discuss the issue with Alan this afternoon. We were working on another item scheduled for the Senior management meeting that has not been resolved and still needs more followup work.

We will let you know what happens tomorrow after the meeting.

Max

-----Original Message-----

From: Craig\_Adams@cargill.com [mailto:Craig\_Adams@cargill.com]  
 Sent: Thursday, June 16, 2005 4:47 PM  
 To: Max\_Gowen@nstaronline.com  
 Subject: RE: Historic Load Data

Sorry for all the confusion. Can you give us a heads-up as to whether we were recommended?

-----Original Message-----

From: Max\_Gowen@nstaronline.com [mailto:Max\_Gowen@nstaronline.com]  
 Sent: Thursday, June 16, 2005 3:46 PM  
 To: Adams, Craig /mtka  
 Subject: RE: Historic Load Data

Craig:

I believe everything is clear. The final recommendation will go to senior management tomorrow.

Max

-----Original Message-----

From: Craig\_Adams@cargill.com [mailto:Craig\_Adams@cargill.com]  
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 Subject: RE: Historic Load Data

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To: alan\_trotta@nstaronline.com; max\_gowen@nstaronline.com  
Subject: Historic Load Data

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**ATTACHMENT**

Information Request AG-1-2

Please describe any RFP pre-bid conference that took place that would allow RFP recipients an opportunity to ask questions about the RFP and describe any other opportunities that allowed recipients to receive clarification and better understand the Company's objectives stated in the RFP.

Response

There was no pre-bid conference held.

The Company's initial filing included the RFP (Exhibit MAG-3). The response to information request AG-1-1 provides the e-mail that was sent to potential bidders. The e-mail told Bidders that if they had questions related to the RFP, they could contact the Company by e-mail, or by phone. The response to information request AG-1-1 also includes the e-mail responses that were sent. Some of the questions raised in e-mails were answered by telephone.

Information Request AG-1-3

Please provide a detailed explanation of the criteria the Company used to develop the list of RFP recipients solicited to participate in the RFP process.

Response

NSTAR Gas Company (the "Company") issues a RFP each year for the portfolio manager contract. The RFP was sent to all the parties to whom the Portfolio Manager RFP was recently sent. In addition, the Company participated in the initial ANE Customer Group evaluation process associated with the replacement of the current ANE supply contract. The Company sent the ANE replacement RFP to parties that were discussed in the group evaluation process and to potential vendors who were indicated to the Company that they were planning to provide offers to supply gas to the ANE Customer Group and interested in offering supplies to the Company.

Information Request AG-1-4

Please provide copies of all existing, pending or proposed and any expired contracts between NSTAR or any affiliate of NSTAR and Constellation or any affiliate of Constellation (excluding the contract up for approval in this matter, D.T.E. 06-10). Include all original contracts and all amendments.

Response

**CONFIDENTIAL ATTACHMENTS**

NSTAR Gas Company has no contracts with Constellation or any affiliate of Constellation other than the contract filed for approval in this proceeding. Please find attached the following contracts between affiliates of NSTAR Gas Company and Constellation or affiliates of Constellation:

Default Service

- Master Default Service Power Supply Agreement (the "Master Agreement") By and Between Boston Edison Company and Constellation Energy Commodities Group, Inc. (October 28, 2005),<sup>1</sup> including Master Default Service Power Supply Agreement Confirmation Letters (Attachment AG-1-4(a) **CONFIDENTIAL**). The load served is:
  - ⇒ 50 percent of the requirements of Boston Edison Company residential and commercial customers in the SEMA Load Zone for the period January 1, 2006 through December 31, 2006;
  - ⇒ 50 percent of the requirements of Boston Edison Company residential and commercial customers in the NEMA Load Zone for the period July 1, 2006 through December 31, 2006;
  - ⇒ 50 percent of the requirements of Cambridge residential and commercial customers for the period January 1, 2006 through December 31, 2006.

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<sup>1</sup> But for the names of the parties, Cambridge Electric Light Company and Commonwealth Electric each executed the same Master Default Service Power Supply Agreements with Constellation Energy Commodities Group, Inc. on October 28, 2005.

Prior to the execution of the Master Agreement, NSTAR Electric executed additional Default Service contracts with affiliates of Constellation that are not appended to this response. These contracts differ from the Master Agreement only with respect to nuances reflecting changes in the wholesale Default Service market over the past four years, including provisions addressing: (1) the creation of the NEMA and SEMA Load Zones; (2) the possible carve-out of LICAP and/or LFR costs; and (3) the transitional period after the termination of Standard Offer Service on February 28, 2005. Descriptions of the contracts are as follows:

- Default Service Power Supply Agreement By and Among Boston Edison, Company, Cambridge Electric Light Company and Constellation Power Source, Inc. (November 19, 2002). The load served was all classes of customers, as follows:
  - ⇒ 100 percent of the requirements for the period January 1, 2003 through June 30, 2003; and
  - ⇒ 50 percent of the requirements for the period July 1, 2003 through December 31, 2003.
- Default Service Power Supply Agreement By and Among Boston Edison Company, Cambridge Electric Light Company and Commonwealth Electric Company and Constellation Power Source, Inc. (November 7, 2003). The load served was:
  - ⇒ 50 percent of the requirements for the period January 1, 2004 through December 31, 2004 for the customers of Boston Edison Company in the Residential and Commercial customer groups within the SEMA Load Zone;
  - ⇒ 50 percent of the requirements for the period January 1, 2004 through December 31, 2004 for the customers of Commonwealth Electric Company in the Residential customer group; and
  - ⇒ 50 percent of the requirements for the period January 1, 2004 through December 31, 2004 for the customers of Cambridge Electric Light Company in the Residential and Commercial customer groups.



- Default Service Power Supply Agreement By and Among Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company and Constellation Power Source, Inc. (October 29, 2004). The load served was:
  - ⇒ 50 percent of the requirements for the period January 1, 2005 through June 30, 2005 of the residential and commercial customers of Boston Edison Company within the NEMA Load Zone taking Default Service;
  - ⇒ 50 percent of the requirements for the period March 1, 2005 through June 30, 2005 of the residential and commercial customers of Boston Edison Company within the NEMA Load Zone taking Default Service;
  - ⇒ 50 percent of the requirements for the period July 1, 2005 through December 31, 2005 of the residential and commercial customers of Boston Edison Company within the NEMA Load Zone taking Combined Default Service;
  - ⇒ 50 percent of the requirements for the period March 1, 2005 through June 30, 2005 of the residential and commercial customers of Boston Edison Company within the SEMA Load Zone taking Transitional Default Service;
  - ⇒ 50 percent of the requirements for the period January 1, 2005 through June 30, 2005 of the commercial customers of Boston Edison Company within the SEMA Load Zone taking Default Service;
  - ⇒ 50 percent of the requirements for the period July 1, 2005 through December 31, 2005 of the residential and commercial customers of Boston Edison Company within the SEMA Load Zone taking Combined Default Service;
  - ⇒ 50 percent of the requirements for the period July 1, 2005 through December 31, 2005 of the residential customers of Cambridge Electric Light Company within the NEMA Load Zone taking Combined Default Service;

- ⇒ 50 percent of the requirements for the period January 1, 2005 through June 30, 2005 of the residential and commercial customers of Commonwealth Electric Company within the SEMA Load Zone taking Default Service;
  - ⇒ 50 percent of the requirements for the period March 1, 2005 through June 30, 2005 of the residential and commercial customers of Commonwealth Electric Company within the SEMA Load Zone taking Transitional Default Service; and
  - ⇒ 50 percent of the requirements for the period July 1, 2005 through December 31, 2005 of the residential and commercial customers of Boston Edison Company within the SEMA Load Zone taking Combined Default Service.
- Default Service Power Supply Agreement By and Between Boston Edison Company and Constellation Energy Commodities Group, Inc. (February 17, 2005). The load served was:
    - ⇒ 100 percent of the requirements for April 1, 2005 through June 30, 2005 for the industrial customers of Boston Edison Company in the SEMA Load Zone; and
    - ⇒ 25 percent of the requirements for April 1, 2005 through June 30, 2005 of the industrial customers of Boston Edison Company within the NEMA Load Zone.
  - Default Service Power Supply Agreement By and Between Boston Edison Company and Constellation Energy Commodities Group, Inc. (May 20, 2005). The load served was:
    - ⇒ 50 percent of the requirements of January 1, 2006 through June 30, 2006 of the commercial customers of Boston Edison Company within the SEMA Load Zone.

#### **Standard Offer Service**

- Standard Offer Service Power Supply Agreement By and Among Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company and Constellation Power Source, Inc. (November 3,

2003), including June 24, 2004 Supplemental Agreement (Attachment AG-1-4(b))(the "2004 Standard Offer Service Agreement").

Prior to the execution of the 2004 Standard Offer Service Agreement, NSTAR Electric executed 2 additional Standard Offer Supply contracts with affiliates of Constellation that are not appended this response. The 2003 Standard Offer Service Agreement differed from the appended contract primarily to account for a post-Standard Market Design sharing mechanism of congestion charge exposure relating to NEMA load that was included in the agreement. The 2002 Standard Offer Service agreement was substantially similar to the 2004 Standard Offer Service Agreement.

**Energy Products (Capacity Sales)**

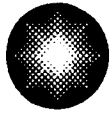
- Master Power Sales Agreement between Boston Edison Company and Constellation Power Source, Inc. (January 15, 1998) (Attachment AG-1-4(c)).

**Miscellaneous Power Purchase Strip Agreements**

- Confirmation Agreement between Boston Edison Company and Constellation Power Source (December 9, 2002) (Attachment AG-1-4(d)). Prior to the execution of the attachment agreement, NSTAR Electric entered into several additional strip agreements with affiliates of Constellation in the wake of the demise of Enron, with which NSTAR Electric had executed an agreement for supply.

111 Market Place  
Suite 500  
Baltimore, Maryland 21202  
410 468-3500  
410 468-3540 Fax

November 5, 2003



**Constellation  
Power Source**

*A Member of the  
Constellation Energy Group*

**BY FEDERAL EXPRESS**

NSTAR Electric & Gas  
One NSTAR Way, NE 220  
Westwood, Massachusetts, 02090

Attention: Mr. Gary Cunningham

**Re: Standard Offer Service Power Supply Agreement**

Dear Gary,

Enclosed please find a fully executed original copy of the above-referenced agreement by and among Constellation Power Source, Inc. ("CPS") and each of the Boston Edison Company ("BEC"), Commonwealth Electric Company ("Commonwealth") and Cambridge Electric Light Company ("Cambridge", and, together with BEC and Commonwealth, "NSTAR Electric"), together with an original copy of the guarantee agreement executed by Constellation Energy Group, Inc. in favor of NSTAR Electric in respect of the above-referenced agreement.

It was a pleasure working with NSTAR Electric and we look forward to finalizing the Default Service Power Supply Agreement with NSTAR Electric in short order.

Sincerely,



Cynthia L. Harkness  
Vice President & Counsel

STANDARD OFFER SERVICE POWER SUPPLY AGREEMENT

DATED AS OF 11/3/2003

BY AND AMONG BOSTON EDISON COMPANY,  
CAMBRIDGE ELECTRIC LIGHT COMPANY,  
COMMONWEALTH ELECTRIC COMPANY AND  
CONSTELLATION POWER SOURCE, INC.

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## **STANDARD OFFER SERVICE POWER SUPPLY AGREEMENT**

This **STANDARD OFFER SERVICE POWER SUPPLY AGREEMENT** ("Agreement") is dated as of November 3, 2003 and is by and among Boston Edison Company ("BECo"), Commonwealth Electric Company ("Commonwealth") and Cambridge Electric Light Company ("Cambridge") (together, "NSTAR Electric") all wholly owned subsidiaries of NSTAR, with a principal place of business at 800 Boylston Street, Boston, MA 02199, and Constellation Power Source, Inc. ("Supplier") with a principal place of business at 111 Market Place, Suite 500, Baltimore, Maryland 21202. This Agreement provides for the sale by Supplier of Service, as defined herein, to NSTAR Electric.

### **ARTICLE 1. BASIC UNDERSTANDINGS**

Supplier, in response to a Request for Proposal dated September 8, 2003 issued by NSTAR Electric, has been selected to be the supplier of firm, load-following power to meet NSTAR Electric's requirements for Service, as defined herein, for:

(a) One hundred per cent (100%) of the requirements for the period January 1, 2004 through December 31, 2004 of the customers of BECo taking service pursuant to the Standard Offer Service Tariff; and

(b) Sixty two and four tenths of a per cent (62.4%) of the requirements for the period January 1, 2004 through December 31, 2004 of the customers of Commonwealth and Cambridge taking service pursuant to the Standard Offer Service Tariff;

(c) One hundred percent (100%) of the wholesale electric supply obligations of BECo pursuant to the Braintree Agreement for the period January 1, 2004 through October 31, 2004 and the Massport Agreement for the period January 1, 2004 through December 31, 2004.

In addition, each NSTAR Electric entity has agreed to sell to Supplier all products, services and payments to which such NSTAR Electric entity is entitled pursuant to the PPAs for the period January 1, 2004 through December 31, 2004.

This Agreement, together with the Appendices hereto, sets forth the terms under which Supplier will supply Service to NSTAR Electric, during the twelve (12) month period beginning on January 1, 2004 and constitutes the entire agreement among the Parties relating to the subject matter hereof and supersedes any other agreements, written or oral, among the Parties concerning such subject matter.

### **ARTICLE 2. DEFINITIONS**

The following words and terms shall be understood to have the following meanings when used in this Agreement or in any associated documents entered into in conjunction with this Agreement. This Agreement includes certain capitalized terms that are not explicitly defined herein. Such capitalized terms shall have the meanings specified in the NEPOOL Rules, as the

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same are in effect from time to time, which meanings are incorporated herein by reference and made a part hereof. In the event of any inconsistency between a definition contained herein and a definition contained in the NEPOOL Rules, the definition in this Agreement shall control for purposes of this Agreement.

**Additional Assurance Amount** is defined in Section 7.4.

**Braintree Agreement** – That certain Contract Demand Agreement, dated August 19, 1993, amended on December 11, 1998, and further amended August 26, 2003 by and between BECo and the Town of Braintree Electric Light Department and terminating on October 31, 2004.

**Business Day** – A day ending at 5:00 p.m. Eastern Prevailing Time, other than Saturday, Sunday and any day which is a legal holiday or a day designated as a holiday by the North American Electric Reliability Council or any successor organization thereto; provided, that, with respect to any payment due hereunder, a “Business Day” shall mean a day ending at 5:00 p.m. Eastern Prevailing Time, other than Saturday, Sunday and any day which is a legal holiday or a day on which banking institutions in Boston, Massachusetts or Baltimore, Maryland are authorized by law or other governmental action to close; and, provided, further, that with respect to any report to be delivered pursuant to Section 3.2 or Section 6.4 hereof, a “Business Day” shall be a day other than Saturday, Sunday and any day which is a legal holiday or a day designated as a holiday by the ISO.

**Claims** – All third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of this Agreement, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

**Commission** – Federal Energy Regulatory Commission.

**Confidential Information** – Certain terms of this Agreement, including the provisions of Article 7 and 8, information regarding individual NSTAR Electric customers, the terms of any security instrument provided by a Party hereto, the identity of Supplier and Supplier Guarantor and such other terms as the Parties agree shall remain confidential. Notwithstanding the foregoing, the following shall not constitute Confidential Information:

- (a) Information which was already in a Party’s possession prior to its receipt from another Party and not subject to a requirement of confidentiality;
- (b) Information which is obtained from a third person who, insofar as is known to the Party, is not prohibited from transmitting the information to the Party by a contractual, legal or fiduciary obligation to the Party; and

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(c) Information which is or becomes publicly available through no fault of the Party.

**Contracts** – The Load Asset Contracts and contracts used to transfer the PPA Entitlement to Supplier entered into the NEPOOL Market System and the ISO and acknowledged pursuant to Section 6.5 hereof.

**Contract PPA Rate** – The prices set forth on Appendix C hereto to be paid per month per MWh by Supplier to NSTAR Electric for PPA Entitlements provided during each month of the Delivery Term.

**Contract Service Rate** – The prices set forth on Appendix B hereto to be paid per month per MWh by each applicable NSTAR Electric entity to Supplier for Service provided during each month of the Delivery Term to the applicable NSTAR Entity.

**Defaulting Party** is defined in Section 8.1.

**Delivered Energy** – The quantity of Energy, expressed in MWhs, provided by Supplier pursuant to this Agreement measured at the Delivery Points. This quantity shall be the quantity of Energy reported to the ISO by NSTAR Electric and/or its agent for each Load Asset, with such quantity being determined in accordance with Section 6.4 hereof. Such quantity does include transmission and distribution losses on NSTAR Electric's respective systems from the Delivery Point to (a) with respect to Standard Offer Service, the meters of each customer taking service pursuant to the Standard Offer Service Tariff, and (b) with respect to Wholesale Service, the delivery points specified in the Wholesale Agreements. PTF losses associated with the Standard Offer Service shall not be included in the definition of "Delivered Energy."

**Delivery Points** – Shall be (a) with respect to Standard Offer Service, any point or points on the PTF within the following Load Zones within the NEPOOL Control Area, as such Load Zones may be modified by the ISO during the Term of this Agreement in accordance with the NEPOOL Rules, as appropriate for each customer in each Load Zone taking service pursuant to the Standard Offer Tariff:

Load Zone	Location ID
.Z.SEMASS ("SEMA")	4006
.Z.NEMASSBOST ("NEMA")	4008

and (b) with respect to Wholesale Service, the delivery points specified in the Wholesale Agreements.

If the ISO implements full or partial nodal pricing for load, as currently contemplated by the ISO and/ or mandated by the Commission during the Term, the delivery points for such Node or Nodes shall be as defined by ISO and/or NEPOOL, which may be modified from time to time by the ISO as appropriate for each customer. Such implementation shall not operate to alter, or

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result in any change or modification to, the Service Price or any other term or condition of this Agreement.

**Delivery Term** – The period beginning at the hour ending 0100 Eastern Prevailing Time on January 1, 2004 and continuing through and including the hour ending 2400 Eastern Prevailing Time on December 31, 2004.

**Demanding Party** is defined in Section 7.3.

**Department** – Massachusetts Department of Telecommunications and Energy.

**Early Termination Date** is defined in Section 8.2.

**EPT** – Eastern Prevailing Time.

**Estimation Process** is defined in Section 6.4.

**ISO** – The independent system operator established in accordance with the NEPOOL Agreement and the Interim Independent System Operator Agreement as amended, superseded or restated from time to time, including the operator of a Regional Transmission Organization (RTO).

**KWh** – Kilowatt-hour.

**Load Zone(s)** – Reliability Regions resulting from implementation of SMD and as defined for use in the ISO-NE Settlement System. The customers of Commonwealth are within the currently-defined Southeastern Massachusetts Load Zone (“Z.SEMASS” or “SEMA”) and the customers of Cambridge are within the currently-defined Northeastern Massachusetts Load Zone (“Z.NEMASSBOST” or “NEMA”). The customers of BECo are within both the NEMA and SEMA Load Zones.

**Locational ICAP** – ICAP within NEMA.

**Market Rules and Procedures** – The Market Rules, Manuals and Procedures adopted by the ISO and/or members of NEPOOL, as may be amended from time to time, and as administered by the ISO to govern the operation of the NEPOOL markets.

**Massport Agreement** – That certain All Requirements Bulk Power Supply Contract and Service Agreement, dated January 31, 1996, by and between BECo and the Massachusetts Port Authority.

**Moody's** – Moody's Investors Service, Inc. and its successors.

**MWh** – Megawatt-hour.

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**NE-GIS** – The New England Generation Information System, which includes a generation information database and certificate system, operated by NEPOOL, its designee or successor entity, that accounts for generation attributes of electricity consumed within New England.

**NE-GIS Certificates** – An electronic record produced by the NE-GIS that identifies the relevant generation attributes of each MWh accounted for in the NE-GIS from a new renewable generation unit that complies with the Renewable Energy Portfolio Standards promulgated at 225 CMR 14.00 et. seq.

**NEPOOL** - The New England Power Pool and any successor.

**NEPOOL Agreement** – The New England Power Pool Agreement dated as of September 1, 1971, as amended and/or restated from time to time.

**NEPOOL Rules** – All rules adopted by NEPOOL or the ISO, as such rules may be amended from time to time, including but not limited to, the Market Rules and Procedures, the associated NEPOOL Manuals, the NEPOOL Operating Procedures, the NEPOOL Agreement and the Interim Independent System Operator Agreement between NEPOOL and the ISO, as amended, superceded or restated from time to time.

**Non-Defaulting Party** is defined in Section 8.2.

**Off-Peak Hours** – All hours which are not Peak Hours.

**Party(ies)** – The applicable NSTAR Electric entity or Supplier or any of them, as the context requires.

**Peak Hours** - Hour ending 0800 through and including hour ending 2300 EPT on each Business Day during the Delivery Term.

**Pool ICAP** –ICAP within Load Zones that are not import or export constrained.

**PPA(s)** – The agreements described on Appendix E.

**PPA Counterparty** – With respect to each PPA, the third party counterparty who is the counterparty to the applicable NSTAR Electric entity, and any applicable successors and assigns thereof.

**PPA Delivered Energy** – The quantity of Energy, expressed in MWhs, provided to Supplier pursuant to the PPAs measured at the PPA Delivery Points. This quantity shall be the quantity of Energy reported to the ISO by the PPA Counterparty and/or its agent, with such quantity being determined in accordance with Section 6.2 hereof. NSTAR Electric shall be

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responsible for obtaining necessary transmission and distribution in order to deliver such Energy to the PPA Delivery Point(s).

**PPA Delivery Points** - The delivery point(s) set forth on Appendix E with respect to each PPA.

**PPA Entitlements** - During, or in respect of, the Delivery Term, 100% of the PPA Products actually received by each NSTAR Electric entity, including all of the electric capacity, energy and ancillary services received by NSTAR Electric under the PPAs as ultimately reported by ISO to Supplier or NSTAR Electric or both, except that if, during the Term, any NSTAR Electric entity is assessed any new cost for a corresponding new benefit under any PPA in respect of any PPA Product, then such benefit shall accrue to such NSTAR Electric entity unless such NSTAR Electric entity is made whole for the portion of such costs associated with the benefit to be received during or in respect of the Delivery Term, in which case such benefit shall accrue to Supplier. As between the Parties, NSTAR Electric shall be responsible for the costs of transmission and losses associated with delivery to the PPA Delivery Points, as more particularly described in Section 6.2. "PPA Entitlements" shall not include any obligation of NSTAR Electric to make payments with respect to the PPAs.

**PPA Forecast** is defined in Section 7.4.

**PPA Price** - The total amount payable each calendar month by Supplier as set forth in Section 5.1(b).

**PPA Products** - During, or in respect of, the Delivery Term, the products provided to the NSTAR Electric entities by the PPA Counterparties, including, to the extent associated with a particular PPA but only insofar as actually credited to the account of NSTAR Electric, all credits, benefits or associated payments due in respect of energy products defined in the NEPOOL Agreement and renewable energy credits and emission allowances received during or in respect of the Delivery Term, and for such future credits, benefits and associated payments resulting from changes therein from time to time which pertain to the Delivery Term, including, (provided that NSTAR Electric will use all reasonable commercial efforts to ensure that it receives or is credited for all PPA Products that it is entitled to under each PPA), capacity (including but not limited to Installed Capability, Unforced Capacity), Locational ICAP, Energy (including NE-GIS Certificates), Forward Reserves, Operating Reserves (including Ten-Minute Spinning, Ten-Minute Non-Spinning and Thirty Minute Operating Reserves), Regulation, Energy Uplift (including, but not limited to, Daily RMR Resource expenses, VAR support, and the variable component of RMR Agreements), Emergency Energy, ISO Tariff Schedules Nos. 2 and 3 charges, PUSH status benefits, benefits associated with Scarcity Pricing lost opportunity, voltage support, negative load asset credit, settlement-only asset credit or load reduction and a pro-rata share of any other credits, benefits, payments or market products to the extent provided by the PPA Counterparties to any of the NSTAR Electric entities and actually allocated or credited by NEPOOL, the ISO or the NSTAR Electric entities' on the basis of Ownership Shares of the PPAs under the NEPOOL Rules, including any successor products; provided, however, that if Supplier

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receives any Energy from a PPA Counterparty in excess of the amount of Energy that should have been delivered to Supplier as a PPA Entitlement, the excess Energy delivered to Supplier will be transferred in the form of Internal Bilateral Transactions ("IBTs") for Energy and will be transferred in the market in which the unit was bid using actual generation. Supplier shall submit IBT Containers, as defined below, for each calendar month and notify NSTAR Electric that the IBT Containers have been submitted into the ISO Settlement Market System and NSTAR Electric shall confirm the IBT Container in the ISO Settlement Market System. For purposes of this Agreement, "IBT Container" shall mean the form of electronic contract submittal, as implemented in the ISO Settlement Market System effective March 1, 2003, that requires NSTAR Electric to confirm the general parameters of the IBT and not the hourly schedules of Energy delivery. As soon as possible but no later than 1:00 PM on the first Business Day following the transaction, NSTAR Electric shall provide prompt written, electronic and/or telephonic notice to Supplier if any schedules are not accurate. Upon notification from NSTAR Electric, Supplier shall correct the schedule with an appropriate IBT in the Market System. In the event the IBT is in the Real Time Market pursuant to Manual 28, Section 9.1.1, Supplier shall re-submit the same for review and confirmation by NSTAR Electric in the ISO Settlement Market System. Provided, however, that if Supplier is technologically unable to execute such IBT transactions through an IBT Container, so long as Supplier is diligently pursuing a remedy, Supplier may defer its obligation to schedule such energy through an IBT Container. Prior to the implementation of the protocol described above, Supplier will submit daily Contracts and Schedules in either the Day Ahead or Real Time market, as appropriate, using actual generation, subject to auto-confirmation.

**Prime Rate** – The lesser of (i) the rate published from time to time in The Wall Street Journal, as the prime lending rate, and (ii) the maximum rate permitted by applicable law.

**Product** – As the context requires, (i) the Standard Offer Product, (ii) the Wholesale Product, and/or (iii) the PPA Product.

**PTF** – Facilities categorized as Pool Transmission Facilities under the NEPOOL Agreement.

**Renewable Energy Portfolio Standards** – The regulations, as of the date hereof, set forth at 225 CMR 14.00) promulgated pursuant to M.G.L. c. 25A, § 11F that requires all retail electricity suppliers in Massachusetts to provide a minimum percentage of electricity from certain renewable energy generating resources.

**Replacement Price** – The price at which the purchaser of a Product, acting in a commercially reasonable manner, purchases at the Delivery Points or PPA Delivery Points, as applicable, replacement supply for any Product not delivered in accordance with this Agreement or a PPA, as applicable, plus: (i) costs reasonably incurred by such Party in purchasing such replacement supply, and (ii) additional transmission charges, if any, reasonably incurred by such Party, or, absent any such purchase, the market price at the Delivery Points or PPA Delivery

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Points, as applicable, for such Product not delivered as determined by such Party in a commercially reasonable manner, which may be a market clearing price for such Product; provided, however, that in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall such Party be required to utilize or change its utilization of any of its owned or controlled assets or market positions to minimize the other Party's/Parties' costs.

**Replacement Rule** is defined in Section 14.2.

**RMR Agreement** – The form of agreement set forth in the NEPOOL Rules.

**RPS Requirement** – NE-GIS Certificates representing the number of MWhs calculated as the product of (a) the Electrical Load, served with Standard Offer Service for the Delivery Term, and (b) 0.015, rounded up to the whole MWh, which shall be equal to NSTAR Electric's obligation with respect to Standard Offer Service under the Renewable Portfolio Standards.

**Sales Price** – The price at which the Party supplying Product, acting in a commercially reasonable manner, resells at the Delivery Points or PPA Delivery Points, as applicable, a Product which the other Party fails to take delivery of, which failure was not excused in accordance with this Agreement, less any (i) costs reasonably incurred by such Party in reselling such Product, and (ii) additional transmission charges, if any, reasonably incurred by such Party in delivering such Product to the third party purchasers, or absent any such resale, the market price at the Delivery Points or PPA Delivery Points, as applicable, for such Product as determined by such Party in a commercially reasonable manner, which price may be a market clearing price for such Product; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall such Party be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize the other Party's/Parties' costs.

**Service** – Standard Offer Service and Wholesale Service.

As of the date hereof, service provided to customers pursuant to the Standard Offer Service Tariff and the Wholesale Agreements is provided pursuant to the following Load Asset designations (as they may be changed or modified from time to time by the ISO) within the ISO Market System as:

<b>Load Asset ID</b>	<b>Load Asset Name</b>	<b>Load Asset Description</b>
298	BECO UNM LOAD	BECO Unmetered Load - NEMA
662	NEA BELLINGHAM UNM SS LOAD	NEA Station Service (BECO SO Load) - SEMA
1482	BECO_LOAD	BECO Standard Offer Load - NEMA
TBD	GRN_SOS_BECO NEMA LOAD	Standard Offer Green BECO NEMA
2420	MASSPORT LOAD	BECO Wholesale Load – NEMA
8108	BECO - SEMA UNM LOAD	BECO Unmetered Load - SEMA
8120	BECO SEMA LOAD	BECO Standard Offer Load - SEMA



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TBD	GRN_SOS_BECO SEMA LOAD	Standard Offer Green BECO SEMA
302	COMELEC UNM LOAD	Commonwealth Unmetered Load - SEMA
1033	COMELEC LOAD	Commonwealth Share of Standard Offer Load - SEMA
TBD	GRN_SOS_COMM LOAD	Standard Offer Green - COMM (SEMA)
8202	COMELEC NEMA UNM LOAD	Cambridge Unmetered Load - NEMA
8205	CAMBRIDGE_SOS_LOAD	Cambridge Share of Standard Offer Load - NEMA
TBD	GRN_SOS_CAMBRIDGE LOAD	Standard Offer Green - CELC (NEMA)

**Service Forecast** is defined in Section 7.4.

**Service Price** – The total amount payable each calendar month by NSTAR Electric as set forth in Section 5.1(a).

**S&P** – Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.) and its successors.

**SMD** – The implementation in NEPOOL as of March 1, 2003 of a congestion management and multi-settlement system within structured markets, currently known as Standard Market Design, as set forth in NEPOOL Rules.

**Standard Offer Product** – All products required to satisfy all requirements to provide Standard Offer Service including, without limitation, capacity (including but not limited to Installed Capability, Unforced Capacity), if applicable, Locational ICAP, Energy (including but not limited to Energy which satisfies Renewable Energy Portfolio Standards as provided in Article 4, Section 4.2), Forward Reserves, Operating Reserves (including but not limited to Ten-Minute Spinning, Ten-Minute Non-Spinning, Thirty Minute Operating Reserves, Replacement Reserves, Locational Reserves, if applicable, Regulation (including but not limited to Automatic Generation Control), and Energy Uplift (including but not limited to VAR support, Daily RMR Resource expenses and the variable component of RMR Agreements), Congestion Components of the LMP, Scarcity Pricing, Emergency Energy, NE-GIS administrative charges (load-weighted to reflect the proportion of the Service; provided, however, that in no even shall the NE-GIS Administrative Charges payable pursuant to this Agreement exceed an aggregate maximum of \$200,000 over the Delivery Term), ISO Tariff Schedule Nos. 2 and 3 charges, PUSH status benefits, lost opportunity, voltage support, and any other requirements, products, expenses or charges imposed or assessed by NEPOOL or the ISO allocated on the basis of Ownership Shares of Load Assets (including but not limited to those allocated on the basis of Ownership Shares of Load Assets, Load Obligations and/or Load Obligation Deviations (including but not limited to Real-Time, Day-Ahead, and/or Adjusted)). Supplier shall be responsible for all transmission and distribution losses associated with delivery of Energy from the Delivery Points to the ultimate customers' meters, as more particularly described in Section 6.3.

**Standard Offer Service** – All Standard Offer Product requirements of each customer described below:

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(a) One hundred per cent (100%) of the requirements for the period January 1, 2004 through December 31, 2004 of the customers of BECo taking service pursuant to the Standard Offer Service Tariff at the Delivery Points; and

(b) Sixty two and four tenths of a per cent (62.4%) of the requirements for the period January 1, 2004 through December 31, 2004 of the customers of Commonwealth and Cambridge taking service pursuant to the Standard Offer Service Tariff at the Delivery Points.

**Standard Offer Service Tariff** – BECo's Tariff for Standard Offer Service, M.D.T.E. No. 102B, Commonwealth's Tariff for Standard Offer Service, M.D.T.E. No. 302B, and Cambridge's Tariff for Standard Offer Service, M.D.T.E. No. 202B, as they may be amended or superseded from time to time and approved by the Department.

**Supplier Guarantor** – Constellation Energy Group, Inc., its successors and permitted assigns under a guaranty delivered to NSTAR Electric in accordance with Section 7.1.

**Term** is defined in Section 3.1.

**Wholesale Agreements** – The Massport Agreement and the Braintree Agreement, each as more particularly described on Appendix F hereto.

**Wholesale Product** – The applicable products or services required to be delivered by BECo to each customer taking Wholesale Service pursuant to the Wholesale Agreements.

**Wholesale Service** – 100% of the Wholesale Product requirements at the Delivery Point (i) for the period January 1, 2004 through October 31, 2004 pursuant to the Braintree Agreement, and (ii) for the period January 1, 2004 through December 31, 2004 pursuant to the Massport Agreement.

### **ARTICLE 3. TERM AND SERVICE PROVISIONS**

#### **Section 3.1 Term**

The term (the "Term") of this Agreement shall begin as of the date hereof and extend through and including the end of the Delivery Term, unless this Agreement is sooner terminated in accordance with the provisions hereof. The applicable provisions of this Agreement shall continue in effect in accordance with Article 23 and to the extent necessary to provide for final accounting, billing, billing adjustments, resolution of any billing disputes, settlement of obligations related to Renewable Energy Portfolio Standards, realization of any collateral or other security, set-off, final payments, payments pertaining to liability and indemnification obligations arising from acts or events that occurred during the Delivery Term, or other such provisions that by their terms or operation, survive the termination of this Agreement.

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## Section 3.2    Data Reporting

By 1:00 p.m. EPT on the second following Business Day after each day during the Delivery Term, NSTAR Electric and other applicable reporting entities will report to the ISO, all of NSTAR Electric's Load Assets and each applicable NSTAR Electric entity will report to Supplier its estimated hourly load responsibility for Standard Offer Service. Upon request by NSTAR Electric, Supplier shall provide NSTAR Electric with any and all ISO-generated reports and/or other data received by Supplier. Such information shall be provided electronically and at substantially the same frequency as received from the ISO. Each NSTAR Electric entity shall use reasonable efforts to notify Supplier of aggregate changes in Standard Offer Service customer load and customer counts, as soon as practical, prior to any customer ceasing to take Standard Offer Service from such NSTAR Electric entity, in the event that such cessation will likely cause the number of MWs supplied by Supplier hereunder to increase or decrease by 10 MWs or more.

Each NSTAR Electric entity shall use commercially reasonable efforts to provide Supplier, upon receipt of any EDI information indicating the cessation of service under the Standard Offer Service Tariff, such EDI information, other than customer name, address and account number. Additionally, as soon as practical after the end of each month during the Delivery Term, each NSTAR Electric entity shall provide Supplier with a summary of: (1) by rate class, the total number of such NSTAR Electric entity's customers taking Standard Offer Service and aggregate usage during such month; and (2) the total number of MWhs of Delivered Energy delivered by Supplier as Standard Offer Service for such NSTAR Electric entity during such month.

## ARTICLE 4.        SALE AND PURCHASE

### Section 4.1    Service

Supplier shall sell and deliver to the Delivery Points and NSTAR Electric shall purchase Service during the Delivery Term in accordance with this Agreement. Supplier understands that the load requirements associated with Service may change from time to time. Supplier's obligation to supply Service requires Supplier to meet the hourly, daily and seasonal electricity load fluctuations associated with customer demand changes. Supplier will be responsible for forecasting load obligations associated with Service on an hourly, daily, and monthly basis. Supplier is responsible for Service regardless of changes in customer demand for any reason, including, but not limited to, daily load fluctuations, increased or decreased usage, demand-side management activities (including but not limited to customer demand response programs), extreme weather and similar events. Supplier's obligation hereunder to sell and provide Service shall not be conditioned upon the availability of any particular electric generating facilities, transmission facilities outside the PTF or power supply arrangements, whether owned by Supplier or third parties. Notwithstanding any other provision to the contrary in this Agreement, Supplier shall not be obligated to sell or deliver any Service to any NSTAR Electric entity for any additional load obligation resulting from any (a) changes to any rate class from such rate class as it exists as of the date hereof, (b) changes in such NSTAR Electric entity's service area

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as it exists as of the date hereof as a result of merger, acquisition, divestiture or otherwise, or (c) any changes to the Wholesale Agreements.

#### Section 4.2 NE-GIS Certificates

(a) Supplier agrees to supply and transfer to the appropriate NSTAR Electric entity's NE-GIS account, NE-GIS Certificates that qualify and meet the Renewable Energy Portfolio Standards in the amount of the RPS Requirement. Accordingly, within the NE-GIS, Supplier shall transfer from its NE-GIS account and NSTAR Electric shall accept into its NE-GIS account, the load obligation served by the Service. The Parties agree that all other compliance responsibilities associated with the Renewable Energy Portfolio Standards are the sole obligation of NSTAR Electric.

(b) Supplier may transfer NE-GIS Certificates that meet Supplier's obligation under clause (a) above to NSTAR Electric's NE-GIS account at any time, subject to the limitations and requirements of the Renewable Energy Portfolio Standards.

(c) If Supplier has not transferred all or part of the NE-GIS Certificates referenced in clause (a) above (a "Shortfall") to the applicable certificate accounts of the NSTAR Electric entities by the close of the last trading period for NE-GIS Certificates applicable to Standard Offer Service, Supplier agrees to pay NSTAR Electric an amount equal to the product of (i) the number of MWhs which constitute the Shortfall, and (ii) the Alternate Compliance Rate as set forth in the Renewable Energy Portfolio Standards.

(d) If Supplier has transferred more NE-GIS Certificates than required pursuant to clause (a) above, NSTAR Electric agrees to transfer to Supplier or Supplier's NE-GIS certificate account, as applicable and as soon as practicable following the request by the Supplier, such excess amount of NE-GIS Certificates.

#### Section 4.3 PPA Entitlements

(a) During the Delivery Term, NSTAR Electric shall sell and deliver (or cause the delivery of) the PPA Entitlements to Supplier at the PPA Delivery Points and Supplier shall purchase, accept and receive the PPA Entitlements. Supplier shall receive the PPA Entitlements at the PPA Delivery Points simultaneously with NSTAR Electric's receipt thereof in accordance with and subject to the terms and conditions of each PPA.

(b) NSTAR Electric shall retain responsibility for all obligations, costs and expenses associated with the PPA Entitlements. NSTAR Electric shall timely perform all obligations required of it under the terms of each PPA and enforce its rights under the PPAs, and except as otherwise provided in Section 4.3(e) shall maintain the PPAs in full force and effect during the Term. NSTAR Electric shall reimburse Supplier for any transmission expenses, charged by the ISO to Supplier, relating to the PPA Entitlements that may apply, including non-PTF transmission or distribution expenses, costs or losses for delivery of the PPA Entitlements to the

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PPA Delivery Points. NSTAR Electric shall notify Supplier immediately in the event that a PPA Counterparty fails, or such NSTAR Electric entity has been advised or has reason to believe that a PPA Counterparty may fail, to perform under any PPA and update Supplier with respect to any such failure or possible failure.

(c) NSTAR Electric shall bid/offer or schedule or, to the extent that NSTAR Electric has the ability to cause any generation asset associated with a PPA Entitlement to be bid into the NEPOOL market system as requested by Supplier, to so cause such asset to be so bid; provided, that any such request by Supplier is, to the extent practical, consistent with historical bidding practices and processes and subject to any applicable governance limitations related to bidding such generation assets and any other limitations set forth in the PPAs and the NEPOOL Rules. Should Supplier request offers or schedules to be placed in the SMD market system which are inconsistent with the preceding sentence, and NSTAR Electric elects to comply with such request, Supplier shall be solely responsible for any and all incremental, increased costs or charges resulting therefrom.

(d) Each NSTAR Electric entity further agrees, during the Delivery Term, to promptly deliver, to Supplier copies of all correspondence with any PPA Counterparty related to any PPA, any PPA Product or any PPA Entitlement, correspondence relating to the operating status of a PPA unit and, further, to notify each PPA Counterparty that it should direct all notices and correspondence pursuant to a PPA and relating to any PPA Product or the delivery of such PPA Product to an electronic messaging address, which is automatically forwarded to Supplier; provided, however, that in the event that any PPA Counterparty fails or is unable or unwilling to so direct such notices and correspondence, Supplier and NSTAR Electric agree to cooperate in an effort to find another means for Supplier to automatically and simultaneously receive such notices and correspondence. Further provided, the foregoing provisions shall not apply to any correspondence or other documents or information relating to a PPA Restructuring.

(e) Supplier understands and agrees that the PPAs may be modified, amended, restructured, replaced, terminated, transferred or assigned in whole or in part by NSTAR Electric, or NSTAR Electric may cease to be considered owner of a PPA Entitlement or Lead Participant for a PPA Unit (each, a "PPA Restructuring") during the Term. Supplier's obligation to provide the Service shall not be affected by any PPA Restructuring if the PPA Restructuring does not materially adversely affect the PPA Products or the PPA Entitlement thereto during the Delivery Term. If a PPA Restructuring will materially adversely affect the PPA Products or the PPA Entitlement thereto during the Delivery Term, then NSTAR Electric shall deliver a comparable replacement for the relevant PPA Product and the PPA Entitlement thereto. A replacement will be considered "comparable" if Supplier receives substantially the same PPA Products pursuant to the PPA Entitlement as it would have received immediately prior to such PPA Restructuring and if such replacement PPA Product is provided to Supplier at the PPA Delivery Points, if applicable. If NSTAR Electric delivers firm Energy to Supplier to replace the Energy to which Supplier would have otherwise been entitled as a PPA Entitlement from a dispatchable unit, such replacement shall be deemed "comparable", if the quantity of replacement Energy delivered to Supplier at the PPA Delivery Points (i) with respect to Peak Hours, is equal to 90% of the

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corresponding historical monthly average output under such PPA during Peak Hours distributed ratably over Peak Hours, and (ii) with respect to Off-Peak Hours, is equal to 100% of the corresponding historical monthly average output during Off-Peak Hours distributed ratably over Off-Peak Hours. For purposes of the foregoing, the historical monthly average shall be determined by averaging the quantity of Energy delivered under such PPA (adjusted for the current NSTAR Electric ownership/ share entitlement percentage, if necessary) during the five year period that ended sixty (60) days prior to the PPA Restructuring date (or to the extent such data is not available for said entire five year period, such data for that period as is available).

#### Section 4.4 Integrated Transactions

The Parties acknowledge and agree that they have entered into this Agreement in reliance on the fact that the transactions contemplated by this Article 4 are integrated and, but for such integration, the Parties would not have otherwise entered into this Agreement.

#### Section 4.5 Locational ICAP/ POOL ICAP

Supplier shall be responsible for providing the full amount of any Locational ICAP associated with the Standard Offer Supply, and NSTAR Electric shall reimburse Supplier for the actual, documented incremental cost difference between Locational ICAP and \$520/MW-Month, which is the assumed embedded cost for Pool ICAP. Supplier shall advise NSTAR Electric of the proposed Locational ICAP price prior to procuring such Locational ICAP. NSTAR may elect, provided that it has given Supplier at least fifteen (15) days prior written notice, in its sole discretion from time to time, to procure Locational ICAP in sufficient quantity to meet the requirements under this Agreement and provide said Locational ICAP to Supplier in lieu of the aforementioned refund to Supplier, in which case Supplier shall reimburse NSTAR Electric for the assumed embedded cost associated with Pool ICAP for the quantity of ICAP provided by NSTAR Electric.

### ARTICLE 5. PRICE AND BILLING

#### Section 5.1 Service Price and PPA Price

(a) The Service Price payable by each NSTAR Electric entity to Supplier in respect of each month during the Delivery Term shall be the sum of (i) the product of: (A) the total Delivered Energy during such month, and (B) the Contract Service Rate applicable to such NSTAR Electric entity for such month, and (ii) any amounts payable by NSTAR Electric to Supplier pursuant to Section 4.5.

(b) The PPA Price payable by Supplier to NSTAR Electric in respect of each month during the Delivery Term shall be the sum of (i) the product of: (A) the total PPA Delivered Energy during such month, and (B) the Contract PPA Rate applicable to such month and (ii) any amounts payable by Supplier to NSTAR Electric pursuant to Section 4.5.

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## Section 5.2 Auction Revenue Rights (ARRs)

It is the intent of the Parties that for each FTR Auction conducted by the ISO for month(s) wholly or partially within the Delivery Term, those ARR's associated solely with the portion of NSTAR Electric's Standard Offer Service being provided by Supplier hereunder shall be assigned or paid to Supplier. As Market Rules are currently structured, all such ARR's will automatically be assigned by the ISO to Supplier because Supplier will have been designated by NSTAR Electric to own all of the applicable Ownership Shares for the Service. However, in the event any ARR's are assigned by the ISO to NSTAR Electric, including ARR's NSTAR Electric receives for any Qualified Upgrade Awards and a known fraction of those ARR's are associated with the Service, NSTAR Electric shall promptly notify Supplier and re-assign or pay such ARR's to Supplier. In the event any ARR's are assigned by the ISO to NSTAR Electric, including ARR's NSTAR Electric receives for any Qualified Upgrade Awards, and are not associated with any particular load, NSTAR Electric agrees to promptly notify Supplier and re-assign or pay a portion of such ARR's to Supplier in a proportion equal to the total number of MWh's delivered to customers ultimately receiving Service (measured, for the purposes of this Section 5.2 at the meters of NSTAR Electric's customers, including customers taking Wholesale Service) for the calendar month prior to the FTR Auction divided by the total number of MWh's consumed by all NSTAR Electric distribution and wholesale customers during the calendar month prior to the FTR Auction. To the extent that either the MWh's delivered as part of Service (measured, for the purposes of this Section 5.2 at the meters of the customers ultimately receiving the Service) or the total number of MWh's consumed by all NSTAR Electric's distribution and wholesale customers is adjusted after allocation and/or distribution of such ARR's, the allocation and/or distribution contemplated by the immediately preceding sentence shall be recalculated and the applicable Party, if any, owing any ARR's to the other shall pay such amount in order to reflect such adjustment. No NSTAR Electric entity shall be under any obligation to participate in any manner in any FTR Auction(s) in order to increase ARR quantities.

## Section 5.3 Billing and Payment

(a) In each month during the Term, Supplier shall calculate the amount due and payable to or by Supplier pursuant to this Article 5 with respect to the immediately preceding month. An invoice, including such calculation, shall be provided to NSTAR Electric, with sufficient SMD Settlement System detail, plus any other detail agreed upon by the Parties, for NSTAR Electric to verify the calculation and the total amount due and payable for the previous month pursuant to this Article 5. Because quantities determined under Section 6.4 are estimated, and subject to the reconciliation process described in Section 6.4(c), quantities used in calculations under this clause (a) shall be subject to adjustment, whether positive or negative, in subsequent months' calculations by application of the applicable Contract Service Rate and/or Contract PPA Rate, as applicable, to any such adjusted quantities.

(b) NSTAR Electric shall pay Supplier any amounts due and payable hereunder on or before the later of (i) the twentieth (20th) day of the month in which the invoice was received,

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and (ii) the tenth (10th) Business Day after receipt of such invoice. Supplier shall pay NSTAR Electric any amounts due and payable hereunder on or before the later of (i) the twentieth (20th) day of the month in which the invoice was sent to NSTAR Electric, and (ii) the tenth (10th) Business Day after such invoice was sent to NSTAR Electric. All invoices shall be paid by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the payee thereof. All payments by NSTAR Electric of invoiced amounts shall be deemed to have been paid in accordance with such invoice, to the extent consistent with the load responsibility information supplied by NSTAR Electric to Supplier and the ISO and, with respect to the PPAs, the information supplied by the applicable Assigned Meter Reader(s) to the ISO. If all or any part of any amount due and payable pursuant to clause (a) shall remain unpaid thereafter, interest shall thereafter accrue and be payable on such unpaid amount at a rate per annum equal to the Prime Rate plus 2% per annum; provided, however, that no interest shall accrue in respect of adjustment amounts calculated in accordance with Section 6.4(c).

(c) If a Party, in good faith, disputes an invoice, the disputing Party shall immediately notify the other Parties of the basis for the dispute and pay the undisputed portion of such invoice no later than the due date. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Prime Rate plus 2% per annum from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned by the receiving Party upon request or deducted by the receiving Party from subsequent payments with interest accrued at the Prime Rate until the date paid or deducted from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment.

#### Section 5.4 Payment Netting

If on any date, properly documented and established amounts would otherwise be payable to or by a Party to another Party, then, on such date, each such Party's obligation to make payment of any such amount shall be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by one Party exceeds the aggregate amount that would otherwise have been payable by such other Party, then such obligation shall be replaced by an obligation of the Party owing the larger aggregate amount, which obligation shall be equal to the difference between the larger aggregate and the smaller aggregate amount. Any invoice pursuant to which a net payment is required to be made shall include sufficient detail to enable the Party required to make such payment to verify the calculation of such net payment.

#### Section 5.5 Taxes, Fees and Levies and Tax Credits with respect to Service

Supplier shall be obligated to pay all present and future taxes, fees and levies, imposed on or associated with delivery of the Service up to the Delivery Points. The NSTAR Electric entities shall be obligated to pay all present and future taxes, fees and levies, imposed on or associated with such Service at and from the Delivery Points. For any new taxes imposed on Supplier with respect to Service, NSTAR Electric shall use all reasonable commercial efforts to recover such new tax from the applicable customers. To the extent that NSTAR Electric



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recovers amounts in respect of such new taxes from customers, NSTAR Electric shall reimburse Supplier for such new taxes paid by Supplier. All Service delivered by Supplier to NSTAR Electric hereunder shall be for sales for resale by NSTAR Electric. NSTAR Electric shall provide Supplier with any certificate reasonably required by Supplier to evidence such sales for resale. NSTAR Electric shall have the right to all credits, deductions and other benefits associated with any payments made under this Agreement, or taxes paid by NSTAR Electric or reimbursed to Supplier by NSTAR Electric as described herein.

Section 5.6    Taxes, Fees and Levies with respect to PPA Entitlements

NSTAR Electric shall be obligated to pay all present and future taxes, fees and levies, imposed on or associated with delivery of the PPA Products up to the PPA Delivery Points. Supplier shall be obligated to pay all present and future taxes, fees and levies, imposed on or associated with the PPA Entitlements at and from the PPA Delivery Points. All PPA Entitlements delivered by NSTAR Electric to Supplier hereunder shall be for sales for resale by Supplier. Supplier shall provide NSTAR Electric with any certificate reasonably required by NSTAR Electric to evidence such sales for resale.

**ARTICLE 6.        DELIVERY, LOSSES AND DETERMINATION AND REPORTING OF HOURLY LOADS**

Section 6.1    Delivery of Service

(a)    The Energy component of Service shall be delivered to NSTAR Electric in the form of three-phase sixty-hertz alternating current at the Delivery Points. Except as provided in Section 6.2, Supplier shall be responsible for all transmission and distribution costs associated with the use of transmission systems outside of NEPOOL and any local point-to-point charges and distribution charges needed to deliver Energy to the Delivery Point. Supplier and NSTAR Electric shall enter into, and file with the ISO, all necessary load asset documents with respect to the Service described in Section 6.5.

(b)    In connection with Service, each NSTAR Electric entity will make arrangements for the transmission and distribution necessary to deliver, at NSTAR Electric's expense, the Service from the Delivery Point to each customer meter, including NEPOOL Regional Network Service, which provides for transmission over PTF, and local network service from any applicable local transmission provider(s), which provides for transmission over non-PTF. Each NSTAR Electric entity will be billed by NEPOOL and the applicable local transmission provider(s) for these services. Supplier may use such Regional Network Service to deliver Service to the Delivery Point, and Supplier shall in no event be liable for such Regional Network Service costs.

Section 6.2    Delivery of PPA Entitlements

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The Energy component of the PPA Entitlements shall be delivered to Supplier in the form of three-phase sixty-hertz alternating current at the PPA Delivery Points. Solely as between the parties hereto, NSTAR Electric shall be responsible for all transmission and distribution costs, including any local point-to-point charges, and distribution charges, needed to deliver Energy to the PPA Delivery Points. Supplier and NSTAR Electric shall enter into, and file with the ISO, all necessary Contracts with respect to the transfer of the PPA Entitlements described in Section 6.5.

### Section 6.3 Losses

Supplier shall be responsible for all transmission and distribution losses associated with the delivery of the Energy component of the Service (a) to the meters of NSTAR Electric's ultimate customers taking Standard Offer Service, and (b) to the delivery point applicable to each customer taking Wholesale Service pursuant to the Wholesale Agreements. Supplier shall provide NSTAR Electric at the Delivery Points with additional quantities of electricity and ancillary services to cover such losses from the Delivery Point (a) to the meters of NSTAR Electric's ultimate retail customers taking Standard Offer Service, and (b) to the delivery point applicable to each customer taking Wholesale Service pursuant to the Wholesale Agreements. The Service Price payable by the NSTAR Electric entities shall be calculated with reference to the quantity of Energy measured at the Delivery Points. The quantities required for this purpose in each hour of each month during the Delivery Term shall be determined in accordance with the Estimation Process and NEPOOL's and NSTAR Electric's documented procedures for calculating loss determination. In the event that any NSTAR Electric entity receives any allocation from the Marginal Loss Revenue Fund in respect of any losses for which Supplier was or is responsible pursuant to this Agreement, such allocation shall be held in trust by such NSTAR Electric entity for Supplier and paid over to Supplier as promptly as reasonably practicable.

### Section 6.4 Determination and Reporting of Hourly Loads

(a) In accordance and compliance with the NEPOOL Rules, NSTAR Electric or its agent will estimate the total hourly load responsibility for Service provided by Supplier pursuant to this Agreement based upon average load profiles developed for each NSTAR Electric entity's actual total hourly load. Appendix A, NSTAR Load Estimation and Reconciliation, attached and incorporated herein by reference, provides a general description of the estimation process that each NSTAR Electric entity or its agent will initially employ (the "Estimation Process"). NSTAR Electric reserves the right to modify the Estimation Process in the future, provided that any such modification shall be designed to enhance the Estimation Process.

(b) In accordance with the NEPOOL Rules, NSTAR Electric or its agent will report to the ISO and to Supplier, Supplier's hourly load responsibility for each Load Asset in respect of which Supplier provides Service, as required. NSTAR Electric or its agent shall report to the ISO and to Supplier, Supplier's hourly-adjusted Service loads by 1:00 p.m. Eastern Prevailing

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Time of the second following Business Day after each day during the Delivery Term or by such other time as required by the NEPOOL Rules.

(c) To refine the estimates of Supplier's monthly load developed by the Estimation Process, NSTAR Electric shall perform a monthly calculation to reconcile the original estimate of Supplier's loads to actual customer usage based on meter reads. To the extent that the ISO requires NSTAR Electric to report such reconciliation to the ISO, NSTAR Electric or its agent shall notify Supplier and the ISO of any revised hourly data no later than the last day of the third month following the billing month. Appendix A, attached and incorporated herein by reference, also provides a general description of this reconciliation process.

#### Section 6.5 NEPOOL Market System

Supplier and each NSTAR Electric entity represents and warrants that it is a NEPOOL member and agrees to remain a NEPOOL member throughout the Term. As soon as possible prior to the start of the Delivery Term, and at least five Business Days prior to the start of the Delivery Term, and as required throughout the Delivery Term, each NSTAR Electric entity and Supplier agree to submit to the ISO any and all forms and electronic files (including but not limited to Asset Registration letters), as necessary to transfer, (and to acknowledge the transfer of all properly submitted forms and electronic files) Load Asset Ownership of all applicable load assets of each NSTAR Electric entity to the Supplier for the Delivery Term, and to transfer (and to acknowledge transfer of), as follows, all PPA Entitlements of each NSTAR Electric entity to Supplier for the Delivery Term. In accordance with the NEPOOL Rules, the Parties shall submit (and acknowledge submission of all properly submitted) Internal Bilateral Transactions at substantially daily frequencies, (with the exception of ICAP, which is monthly) but prior to the Trading Deadlines for each PPA sufficient to transfer the PPA Products to the Supplier; provided, however, that with respect to the PPAs, if any, for which NSTAR Electric entities have Generator Asset Ownership Percentages, the Parties may agree to transfer (and to acknowledge transfer of properly submitted) said Generator Asset Ownership Percentages. Notwithstanding which of these two methods the Parties utilize for transfer of the PPAs, the Parties agree that it is their intent that all charges and credits associated with the PPAs during the Delivery Term which are, or otherwise would be, charged or credited by NEPOOL to the NSTAR Electric entity(ies) are to be the responsibility of, and accrue to, Supplier; provided, however, and subject to the provisions of 4.3(d) hereof, that in no event shall Supplier be liable for NEPOOL or ISO – NE charges or entitled to credits in excess of such charges and credits that are allocated by NEPOOL to the Generator Asset Owner. Each NSTAR Electric entity and Supplier further agree to promptly delivery to the other Party copies of all correspondence with the ISO or NEPOOL related to this Agreement, the PPA Entitlements and/or the Service provided hereunder.

### **ARTICLE 7. SECURITY**

#### Section 7.1 Guaranty

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In order to secure performance by Supplier in accordance with this Agreement, Supplier shall provide NSTAR Electric, upon the execution of this Agreement, with a written guarantee, in the form attached hereto as Appendix D, from Supplier Guarantor.

#### Section 7.2 Irrevocable Letter of Credit

As additional security for performance by Supplier in accordance with this Agreement, Supplier shall provide NSTAR Electric, on or before January 1, 2004, with an irrevocable letter of credit or other security instrument in a form acceptable to NSTAR Electric that (i) is in the following amounts: (a) Thirty Eight Million United States Dollars (\$38,000,000) for the period January 1, 2004 through June 30, 2004, (b) Twenty Five Million United States Dollars (\$25,000,000) for the period July 1, 2004 through September 30, 2004, and (c) Eighteen Million United States Dollars (\$18,000,000) for the period October 1, 2004 through December 31, 2004, and (ii) is issued by a major U.S. commercial bank or the U.S. branch office of a major foreign bank, in either case, whose senior unsecured debt obligations have been rated at least (A) "A-" by S&P and "A3" by Moody's, if such entity is rated by both S&P and Moody's or (B) "A-" by S&P or "A3" by Moody's, if such entity is rated by either S&P or Moody's but not both (a "Qualified Bank"), and (iii) will allow NSTAR Electric to draw thereon in an amount equal to the Settlement Amount, upon the designation of an Early Termination Date or upon the entry of a final judgment or award in a definitive amount pursuant to this Agreement. Supplier shall at all times during the Delivery Term maintain, for the benefit of NSTAR Electric, a letter of credit or other security instrument, which complies with the requirements set forth in this Section 7.2.

#### Section 7.3 Additional Assurance

If at any time during the Term, the credit rating assigned to the senior unsecured debt obligations of Supplier Guarantor or any NSTAR Electric entity falls below "BBB-" (as assigned by S&P) or its equivalent from Moody's (the "Trigger Event"), Supplier or the applicable NSTAR Electric entity (the "Triggering Entity") shall provide credit support to the other Party (the "Demanding Party"), within three (3) Business Days after the Demanding Party's written request therefore, in an amount equal to the Additional Assurance Amount calculated by the Demanding Party pursuant to Section 7.4 of this Agreement determined as of the date of the Trigger Event, in any of the following forms: (i) a letter of credit issued by a Qualified Bank, which will allow the Demanding Party to draw on the letter of credit in the full amount of the Additional Assurance Amount (as defined in Section 7.4) upon the designation of an Early Termination Date or upon the entry of a final judgment or award in a definitive amount pursuant to this Agreement, or (ii) such other credit support proposed by the Triggering Party that is reasonably acceptable to the Demanding Party.

#### Section 7.4 Additional Assurance Amount

For purposes of Section 7.3, if Supplier is the Triggering Party, the "Additional Assurance Amount" shall be an amount equal to the sum, if positive, of (a) the difference, (positive or negative, if any) between the (i) replacement value of Service for the remainder of

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the Delivery Term, calculated with reference to the Replacement Price and the Service Forecast, and (ii) the contract value of Service for the remainder of the Delivery Term calculated with reference to the Contract Service Rate and the Service Forecast (the "Contract Value"), and (b) the difference (positive or negative) between (i) the contract value of the PPA Entitlements, calculated with reference to the Contract PPA Rate and the PPA Forecast, and (ii) the sales value of the PPA Entitlements, calculated with reference to the Sales Price and the PPA Forecast, less (c) the available undrawn amount of any letter of credit or other security instrument provided in accordance with Section 7.2, and less (d) the amount of any additional assurance previously provided in accordance with Section 7.3 and then held by such Demanding Party. If an NSTAR Electric entity is the Triggering Party, then the "Additional Assurance Amount" shall be the sum, if positive, of (v) the difference, (positive or negative if any) between the (i) Contract Value, and (ii) market value of the Service determined with reference to the Sales Price and the Service Forecast, and (w) the difference (positive or negative) between (i) the replacement value of the PPA Entitlements, calculated with reference to the Replacement Price and the PPA Forecast, and (ii) the contract value of the PPA Entitlements, calculated with reference to the Contract PPA Rate and the PPA Forecast, and (x) the forecast value of the Auction Revenue Rights to be supplied by NSTAR Electric to Supplier for the remainder of the Delivery Term, less (y) the available undrawn amount of any letter of credit or other security instrument provided in accordance with Section 7.2, and less (z) the amount of any additional assurance previously provided in accordance with Section 7.3 and then held by such Demanding Party, determined by Supplier in good faith and in a commercially reasonable manner, all determined solely with respect to the individual NSTAR Electric Triggering Party. For purposes of determining the Additional Assurance Amount pursuant to this Section 7.4, the quantity of Energy to be delivered in respect of (aa) the Service shall be based upon a forecast of Service for the balance of the Delivery Term by the Demanding Party in good faith and in a commercially reasonable manner (the "Service Forecast"), and (bb) the PPA Entitlements, shall be based upon a forecast of PPA Entitlements for the balance of the Delivery Term by the Demanding Party in good faith and in a commercially reasonable manner (the "PPA Forecast").

## **ARTICLE 8.            DEFAULT AND REMEDIES**

### **Section 8.1    Events of Default**

Any one or more of the following shall constitute an "Event of Default" hereunder with respect to any NSTAR Electric entity or Supplier (the "Defaulting Party"):

(a)    The failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;

(b)    Any representation or warranty made by such Defaulting Party herein, or, with respect to Supplier, by Supplier Guarantor in the Guaranty, is false or misleading in any material respect when made or when deemed made or repeated;

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(c) The failure to satisfy any material obligation, including failure to provide Products, failure to satisfy any NEPOOL Financial Assurance Policies or failure to remain a member of NEPOOL throughout the Delivery Term, as a result of which another Party is obligated to assume responsibility or cost for the provision of such Product;

(d) The failure to provide or maintain the Guaranty, irrevocable letter of credit (or other security instrument in accordance with Section 7.2), or any other credit support required pursuant to Article 7;

(e) The failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default as specified above) or, with respect to Supplier, by Supplier Guarantor in the Guaranty if such failure is not remedied within three (3) Business Days after written notice;

(f) With respect to NSTAR Electric, the failure to satisfy its market settlement system obligations to the ISO with respect to the PPA Entitlements, as a result of which Supplier loses the value of all or a material part of the PPA Entitlements or does not receive compensation for the same from NSTAR Electric, if such failure is not remedied within three (3) Business Days after written notice; or

(g) Such entity or Supplier Guarantor (which event with respect to Supplier Guarantor shall constitute an Event of Default of Supplier): (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

#### Section 8.2 Right of Early Termination Upon Event of Default

If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the aggrieved Party (the "Non-Defaulting Party") shall have the right to designate a day, no earlier than the day such notice is effective and no later than twenty (20) days after such notice is effective, as an early termination date ("Early Termination Date"). Upon the occurrence of an Early Termination Date, no further payments or deliveries, or receipt of deliveries under Section 4 or 5 of this Agreement will be required to be made. The amount payable in respect of an Event of Default and any early termination of this Agreement shall be determined pursuant to Section 8.3.

#### Section 8.3 Remedies Upon Designation of an Early Termination Date; Settlement Amount

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(a) Upon the designation of an Early Termination Date, the Non-Defaulting Party shall calculate a Settlement Amount. The "Settlement Amount" shall be an amount equal to the "Additional Assurance Amount" calculated by the Non-Defaulting Party in accordance with Section 7.4 hereof plus, without duplication, its total losses and costs in connection with such early termination of this Agreement, including losses and costs pursuant to Section 8.2, any loss of bargain, cost of funding or, at the election of such Non-Defaulting Party, but without duplication and consistent with such Non-Defaulting Party's obligation to mitigate such losses and costs, losses and/or costs (including employee and consultant costs and reasonable attorneys' fees) incurred as a result of its obtaining, terminating, establishing or reestablishing any hedge in connection with such transactions or replacement of such transactions, and any losses and costs in respect of performance (or failure to perform) under the Agreement on or before the time of such termination. For purposes of determining the Settlement Amount pursuant to this Section 8.3(a), the applicable quantity of Service shall be based upon the Service Forecast, the applicable quantity of PPA Entitlements shall be based upon the PPA Forecast, the Defaulting Party shall be deemed to be the "Triggering Party" and the Non-Defaulting Party shall be deemed to be the "Demanding Party". The Non-Defaulting Party shall also have the right, without duplication of any damages calculated pursuant to this Article 8, to pursue specific performance with respect to an Event of Default, but shall not be entitled to pursue any other form of equitable relief.

(b) The Non-Defaulting Party shall be entitled to accelerate all amounts owing by the Defaulting Party under this Agreement (whether or not then due) and shall be entitled to withhold and set off any amounts owed by the Non-Defaulting Party to the Defaulting Party against any such accelerated payments and any other amounts owed by the Defaulting Party to the Non-Defaulting Party, including any Settlement Amount payable as a result of the designation of an Early Termination Date.

#### Section 8.4 Notice of Payment of Settlement Amount

As soon as practicable after an Early Termination Date, the Non-Defaulting Party shall notify the Defaulting Party of the amount of the Settlement Amount. The notice shall include a written statement explaining in reasonable detail the calculation of such amount and shall indicate the underlying assumptions, quotations, prices and forecasts, used to calculate the same. The Settlement Amount shall be paid by the Party owing such amount within two (2) Business Days after such notice. If the Defaulting Party disagrees with the calculation of the Settlement Amount, the undisputed portion of such amount shall be paid and the Defaulting Party shall have the right to dispute such calculation in accordance with the terms and condition of this Agreement.

#### Section 8.5 Obligations Following Expiration or Termination

Upon the termination or expiration of this Agreement, in addition to such rights and obligations enumerated elsewhere in this Agreement, the grant of any and all right and interest to Supplier to (a) supply the Service, and (b) receive the PPA Entitlements shall cease, and NSTAR Electric and Supplier shall immediately make all necessary filings with NEPOOL and the ISO

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and perform all other acts necessary to transfer all such rights and interests back to NSTAR Electric.

**ARTICLE 9.        NOTICES, REPRESENTATIVES OF THE PARTIES**

Section 9.1    Notices

Any notice, demand, or request required or authorized by this Agreement to be given by one Party to another Party shall be in writing. Such notice shall be sent by facsimile, electronic messaging (confirmed by telephone), courier, personally delivered or mailed, postage prepaid, to the representative of the other Parties designated in this Article 9. Any such notice, demand, or request shall be deemed to be given (i) when sent by facsimile or electronic messaging, (ii) when actually received if delivered by courier, overnight mail or personal delivery, or (iii) three (3) days after deposit in the United States mail, if sent by first class mail.

Notices and other communications by Supplier to NSTAR Electric shall be addressed to:

Mr. Robert H. Martin  
Director, Electric & Gas Contract Administration  
NSTAR Electric & Gas Corporation  
One NSTAR Way  
Westwood, MA 02090  
Phone: (781) 441-8058  
Facsimile: (781) 441-8053  
Electronic Messaging: Robert\_Martin@nstaronline.com

With a copy to:

NSTAR Electric & Gas Corporation  
800 Boylston Street  
Boston, MA 02199  
Attention: Timothy Cronin  
Phone: (617) 424-2104  
Facsimile: (617) 424-2733  
Electronic Messaging: Timothy\_Cronin@nstaronline.com

Notices and other communications by NSTAR Electric to Supplier shall be addressed to:

Head of Operations  
Constellation Power Source, Inc.  
111 Market Place  
Suite 500  
Baltimore, Maryland 21202  
Phone: (410) 468-3483  
Facsimile: (410) 468-3450



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Electronic Messaging: nstarsosdata@constellation.com

With a copy to:

Head of Structured Risk  
Constellation Power Source, Inc.  
111 Market Place  
Suite 500  
Baltimore, Maryland 21202  
Phone: (410) 468-3490  
Facsimile: (410) 468-3499

General Counsel  
Constellation Power Source, Inc.  
111 Market Place  
Suite 500  
Baltimore, Maryland 21202  
Phone: (410) 468-3496  
Facsimile: (410) 468-3499

Head of Origination  
Constellation Power Source, Inc.  
111 Market Place  
Suite 500  
Baltimore, Maryland 21202  
Phone: (410) 468-3570  
Facsimile: (410) 468-3541

Any Party may change its representative by written notice to the other Parties.

Section 9.2 Authority of Representative

The Parties' representatives designated in Section 9.1 shall have full authority to act for their respective principals in all technical matters relating to the performance of this Agreement. The Parties' representatives shall not, however, have the authority to amend, modify or waive any provision of this Agreement unless they are authorized officers of their respective entities and such amendment, modification or waiver is made pursuant to Article 17.

**ARTICLE 10. LIABILITY, INDEMNIFICATION, AND RELATIONSHIP OF PARTIES**

Section 10.1 Limitation on Consequential, Incidental and Indirect Damages

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TO THE FULLEST EXTENT PERMITTED BY LAW, NO NSTAR ELECTRIC ENTITY NOR SUPPLIER, NOR THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, PARENT OR AFFILIATES, SUCCESSOR OR ASSIGNS, OR THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, OR EMPLOYEES, SUCCESSORS OR ASSIGNS, SHALL BE LIABLE TO THE OTHER PARTIES OR THEIR RESPECTIVE PARENTS, SUBSIDIARIES, AFFILIATES, OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, SUCCESSORS OR ASSIGNS, FOR CLAIMS, SUITS, ACTIONS OR CAUSES OF ACTION FOR INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, MULTIPLE OR CONSEQUENTIAL DAMAGES CONNECTED WITH OR RESULTING FROM PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, OR ANY ACTIONS UNDERTAKEN IN CONNECTION WITH OR RELATED TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY SUCH DAMAGES WHICH ARE BASED UPON CAUSES OF ACTION FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND MISREPRESENTATION), BREACH OF WARRANTY, STRICT LIABILITY, STATUTE, OPERATION OF LAW, UNDER ANY INDEMNITY PROVISION OR ANY OTHER THEORY OF RECOVERY. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, UNLESS OTHERWISE SPECIFIED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. THE PROVISIONS OF THIS SECTION 10.1 SHALL APPLY REGARDLESS OF FAULT AND SHALL SURVIVE TERMINATION, CANCELLATION, SUSPENSION, COMPLETION OR EXPIRATION OF THIS AGREEMENT.

Section 10.2 Indemnification

(a) Each Party shall indemnify, defend and hold harmless each other Party from and against any Claims arising from or out of any event, circumstance, act or incident occurring or existing during the period when control and title to the applicable Product is vested in such Party as provided in Section 10.4.

(b) If any Party intends to seek indemnification under this Section 10.2 from any other Party with respect to any Claim, the Party seeking indemnification shall give such other Party notice of such Claim within fifteen (15) days of the commencement of, or actual knowledge of, such Claim. Such Party seeking indemnification shall have the right, at its sole cost and expense, to participate in the defense of any such Claim. The Party seeking

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indemnification shall not compromise or settle any such Claim without the prior consent of the other Party, which consent shall not be unreasonably withheld.

(c) Notwithstanding any provision to the contrary herein, the Parties agree that BECo, Cambridge, and Commonwealth shall not be jointly and severally liable for the obligations hereunder.

#### Section 10.3 Independent Contractor Status

Nothing in this Agreement shall be construed as creating any relationship among any NSTAR Electric entity and Supplier other than that of independent contractors for the sale of electricity and other related products. No Party shall be deemed to be the agent of any other Party for any purpose by reason of this Agreement, and no partnership or joint venture or fiduciary relationship among the Parties is intended to be created hereby.

#### Section 10.4 Title; Risk of Loss

(a) Title to and risk of loss related to the Service shall transfer from Supplier to the applicable NSTAR Electric entity at the Delivery Point. Supplier warrants that it will deliver to NSTAR Electric the Service free and clear of all Claims or any interest therein or thereto by any person arising prior to the Delivery Point.

(b) Title to and risk of loss related to the PPA Entitlements shall transfer from the applicable NSTAR Electric entity to Supplier at the applicable PPA Delivery Point. Each NSTAR Electric entity warrants that it will deliver to Supplier the PPA Entitlements free and clear of all Claims or any interest therein or thereto by any person arising prior to the applicable PPA Delivery Point.

### ARTICLE 11. ASSIGNMENT

#### Section 11.1 General Prohibition Against Assignments

Except as provided in Section 11.2 below, no Party shall assign, pledge or otherwise transfer this Agreement or any right or obligation under this Agreement without first obtaining the other Parties' written consent, which consent shall not be unreasonably withheld.

#### Section 11.2 Exceptions to Prohibition Against Assignments

A Party may, without the other Parties' prior written consent, (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, provided that such Party shall not be relieved of any obligation hereunder; (ii) transfer or assign this Agreement to an affiliate of such Party (which affiliate shall own or control the resources necessary to satisfy the assigning Party's obligations hereunder, and shall have a net worth and creditworthiness equal to or higher than

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that of such assigning Party); or (iii) transfer or assign this Agreement to any person or entity succeeding by merger or by acquisition to all or substantially all of the assets of the assigning Party (provided such person or entity shall have a net worth and creditworthiness equal to or higher than that of such assigning Party); provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof.

#### **ARTICLE 12.      SUCCESSORS AND ASSIGNS**

This Agreement shall inure to the benefit of and shall be binding upon the Parties hereto and their respective permitted successors and assigns.

#### **ARTICLE 13.      WAIVERS**

The failure of a Party to insist in any instance upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights under this Agreement shall not be construed as a general waiver of any such provision or the relinquishment of any such right, except to the extent such waiver is in writing and signed by an authorized representative of such Party.

#### **ARTICLE 14.      REGULATION**

##### **Section 14.1    Laws and Regulations**

Each Party shall perform its obligations hereunder in accordance with applicable law, rules and regulations. The rates, charges, terms and conditions contained in this Agreement are not subject to change under Sections 205 or 206 of the Federal Power Act, as either section may be amended or superseded, absent the mutual written agreement of the Parties. It is the intent of this Section that, to the maximum extent permitted by law, the rates, charges, terms and conditions of this Agreement shall not be subject to such change. Absent the agreement of the Parties to the proposed change, the standard of review for changes to Article 5 of this Agreement proposed by a Party, a non-Party, or the Commission, acting sua sponte, shall be the "public interest" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) (the "Mobile-Sierra" doctrine).

##### **Section 14.2    NEPOOL Requirements**

This Agreement must comply with all NEPOOL Rules. If, during the Term, the NEPOOL Rules are terminated or amended in a manner that would eliminate or materially alter a NEPOOL Rule affecting a right or obligation of a Party hereunder, or if such NEPOOL Rule is eliminated or materially altered by NEPOOL or the ISO, the Parties agree to negotiate in good faith in an attempt to amend this Agreement to incorporate a replacement rule ("Replacement Rule"). The intent of the Parties is that any such Replacement Rule reflect, as closely as possible, the intent, substance and effect of the rule being replaced as such rule was in effect

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prior to such termination or amendment of the NEPOOL Rules or elimination or alteration of the NEPOOL Rules, and that the adoption of any Replacement Rule shall not alter (i) the obligations of the Parties pursuant to Article 4 or 5 of this Agreement, (ii) the Contract Service Rate, or (iii) the Contract PPA Rate. The Parties agree in good faith to restore this Agreement to embody the Parties' original intent and economic effect.

#### Section 14.3 Sales Tariffs

Each Party agrees if it seeks to amend any applicable power sales tariff during the Term, such amendment will not in any way affect this Agreement without the prior written consent of the other Parties. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement.

#### Section 14.4 Uniform Disclosure Requirements

(a) On a calendar quarterly basis, Supplier shall provide NSTAR Electric information pertaining to power plant emissions, fuel types, labor information and any other information to the extent required by NSTAR Electric to comply with the uniform disclosure requirements contained in 220 CMR 11.00 and any other such disclosure regulations which may be imposed upon NSTAR Electric during the Term, as such disclosure requirements apply to Service provided by Supplier pursuant to this Agreement.

(b) On a calendar quarterly basis, NSTAR Electric shall provide Supplier information pertaining to the PPAs and relating to power plant emissions, fuel types, labor information and any other information to the extent required by Supplier during the Term.

#### Section 14.5 Retail Affiliates of Supplier

Supplier acknowledges the standards of conduct requirements set forth in DPU/DTE 97-96. If Supplier is affiliated with an entity that is engaged in the sale of electricity to retail customers in Massachusetts (a "Retail Affiliate") during the Term, Supplier shall not assign any interest hereunder to such Retail Affiliate. Non-public, proprietary customer specific information provided by any NSTAR Electric entity to Supplier shall be provided to Supplier's risk management group ("RMG"), or its successor organization. The RMG shall eliminate any customer specific information, such as customer name or account number, and aggregate the information prior to any further dissemination of such information.

### **ARTICLE 15. INTERPRETATION**

The interpretation and performance of this Agreement shall be in accordance with and controlled by the laws of the Commonwealth of Massachusetts, without giving effect to its conflict of laws provisions.

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**ARTICLE 16.      SEVERABILITY**

If any provision or provisions of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall in no way be affected or impaired thereby; and the Parties hereby agree to effect such modifications to this Agreement as shall be reasonably necessary in order to give effect to the original intention of the Parties.

**ARTICLE 17.      MODIFICATIONS**

No modification to this Agreement will be binding on any Party unless in writing and signed by all Parties.

**ARTICLE 18.      REPRESENTATIONS AND WARRANTIES**

Section 18.1    Representations and Warranties.

Supplier and each NSTAR Electric entity represent and warrant that:

(a)    It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

(b)    It has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;

(c)    The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;

(d)    This Agreement, and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any equitable defenses;

(e)    It is not bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it, which would result in it being or becoming bankrupt; and

(f)    There is not pending or, to its knowledge, threatened against it, any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement.

Section 18.2    Additional NSTAR Electric Representation and Warranty

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NSTAR Electric represents and warrants that to the best of NSTAR Electric's knowledge as of the date of this Agreement: (i) each PPA and the Wholesale Agreement (collectively, the "NSTAR Contracts") is in full force and effect, (ii) that all material amendments and modifications to the NSTAR Contracts are identified on Appendix E and F, as applicable, (iii) that NSTAR Electric is not in default under the terms of any of the NSTAR Contracts nor has any event occurred which with the passage of time, after notice, if required, would become an event of default thereunder with respect to NSTAR Electric or, to the best of NSTAR Electric's knowledge, a PPA Counterparty or any other party under any of the NSTAR Contracts, except as disclosed on Schedule 18.2 hereof, and (iv) the data provided to Supplier with respect to the Service and the NSTAR Contracts, including the information provided in the Appendices hereto, but excluding such data that constitutes or includes estimates or projections, is accurate and complete in all material respects.

**ARTICLE 19.        COUNTERPARTS**

This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

**ARTICLE 20.        HEADINGS; CONSTRUCTION**

Article and Section headings used throughout this Agreement are for the convenience of the Parties only and are not to be construed as part of this Agreement. For purposes of this Agreement, the term "including" shall mean "including, without limitation" and the terms "herein", "hereunder", "herewith" and "hereof" are references to this Agreement, taken as a whole. The Parties acknowledge that this Agreement is the result of joint discussion and negotiation. Each Party contributed to the substantive provisions hereof and no Party can be identified as the sole drafter hereof.

**ARTICLE 21.        CONFIDENTIALITY**

All Confidential Information shall be held and treated by the Parties and their agents in confidence, used solely in connection with this Agreement, and shall not, except as hereinafter provided, be disclosed without the other Parties' prior written consent. Notwithstanding the foregoing, this Agreement may be disclosed to a third party (a) for the purpose of effectuating the supply, transmission and/or distribution of Energy or any other product or service to be delivered pursuant to this Agreement, (b) to regulatory authorities of competent jurisdiction, or as otherwise required by applicable law, regulation or order, and (c) to third parties in connection with merger, acquisition/disposition and financing transactions, provided that any such third party shall have signed a confidentiality agreement with the disclosing party containing customary terms and conditions that protect against the disclosure of the Confidential Information and, that strictly limit the recipient's use of such information only for the purpose of the subject transaction and that provide for remedies for non-compliance. In the event that a Party ("Disclosing Party") is requested or required to disclose any Confidential

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Information pursuant to subsections (a) and (b) above, the Disclosing Party shall provide the other Parties with prompt written notice of any such request or requirement, so that the other Parties may seek an appropriate protective order, other confidentiality arrangement or waive compliance with the provisions of this Agreement. If, failing the entry of a protective order, other confidentiality arrangement or the receipt of a waiver hereunder, the Disclosing Party, in the opinion of counsel, is compelled to disclose Confidential Information, the Disclosing Party may disclose that portion of the Confidential Information which the Disclosing Party's counsel advises that the Disclosing Party is compelled to disclose; provided, that any such disclosure includes a request for confidential treatment of this Agreement and the request for redaction of the Confidential Information from the copies of this Agreement which are placed in the public record or otherwise made available to third parties. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. In addition to the foregoing, the Disclosing Party shall indemnify, defend and hold harmless the other Parties from and against any Claims, threatened or filed, and any losses, damages, expenses, attorneys' fees or court costs incurred by such Party in connection with or arising directly or indirectly from or out of the Disclosing Party's disclosure of the Confidential Information to third parties except as permitted above.

**ARTICLE 22.      AUDIT**

Each Party has the right, upon reasonable advance notice and at its sole expense and during normal working hours, to examine the records of any other Party to the extent reasonably necessary to verify the accuracy of any invoice, charge or computation made pursuant to this Agreement. If requested, a Party shall provide to any other Party invoices evidencing the quantities of Energy delivered at the Delivery Points or PPA Delivery Points, as applicable. If any such examination reveals any inaccuracy in any invoice, the necessary adjustments to such invoice and the payments thereof will be made promptly and shall bear interest calculated at the Prime Rate from the date the overpayment or underpayment was made until paid.

**ARTICLE 23.      SURVIVAL**

The provisions of Article 5, Sections 4.2, 8.3, 8.4, Article 10, Section 14.4, and Articles 21, 22 and 24 hereof, and to the extent any Section of this Agreement specifies by its terms that it survives termination, such Section shall survive the termination or expiration of this Agreement; provided, however, that in no event shall the Term or any provision of this Agreement extend beyond the second (2<sup>nd</sup>) anniversary of the last day of the Delivery Term.

**ARTICLE 24.      DISPUTE RESOLUTION**

In the event of any dispute among the Parties arising out of or relating to this Agreement, the Parties shall refer the matter to their duly authorized officers for resolution. Should such officers fail to resolve the dispute within ten (10) days after such referral, either Party may seek such further legal recourse as such Party sees fit, provided that for the purposes of any litigation



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of such disputes the Parties agree to submit to the exclusive jurisdiction of the federal courts in the Commonwealth of Massachusetts.

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this Agreement on their behalf as of the date first above written.

BOSTON EDISON COMPANY

By: Ellen K. Angley  
Name: Ellen K. Angley  
Title: V.P. Energy Supply and Transmission

CAMBRIDGE ELECTRIC LIGHT COMPANY

By: Ellen K. Angley  
Name: Ellen K. Angley  
Title: V.P. Energy Supply and Transmission

COMMONWEALTH ELECTRIC COMPANY

By: Ellen K. Angley  
Name: Ellen K. Angley  
Title: V.P. Energy Supply and Transmission

CONSTELLATION POWER SOURCE, INC.

By: John A. Jansa  
Name: John A. Jansa  
Title: Treasurer

LEGAL REVIEW

INT DATE

[Signature]

11-5-2003

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## **APPENDIX A.      NSTAR LOAD ESTIMATION AND RECONCILIATION**

### **1. General Description**

Each Business Day, NSTAR Electric calculates its territory loads for every hour of the previous day(s) using actual hourly generation and interchange metered values. The territory loads are defined as the total customer load plus non-PTF transmission and distribution losses for the Load Zones within each service territory (BECo NEMA, BECo SEMA, Commonwealth (SEMA) & Cambridge (NEMA)). The territory loads are then input to the Load Estimation process.

Load Estimation at NSTAR Electric is billing account based. For each active account for the day to be estimated, a daily billing load is developed. This is accomplished in one of two ways. First, if the account has been billed, the latest bill information (account, number of billing days, total kWh, supplier ID) is used to compute a daily average use (total kWh/number of billing days). Second, if the account is active but has not been billed (new account), a daily rate average is used. The daily rate average is based on the past 24 months billing for all customers by rate.

The billing file used in this process is an SAS dataset created each day upon the completion of nightly cycle billing through the Customer Information System ("CIS"). This SAS dataset combines three of the NSTAR Electric's four billing systems, computer billed accounts, time-of-use billed accounts, and special ledger accounts, into one file. A fourth billing system, municipal lighting, is incorporated by the load estimation process. The SAS dataset and municipal lighting files include the Load Zone assignment for each account.

Once daily billing loads are developed using the CIS data, line losses are added to each account. The losses are by rate code and are based on NSTAR Electric studies. Adding the line losses to the daily billing load for each account creates the daily load for estimation per account.

Load shapes are applied to the daily load for estimation per account. The load shapes are based on load research data and are broken into weekday load shape and weekend load shape. The application of the load shape distributes the daily load for estimation for each account over 24 hours.

Telemetered accounts (when available) are scaled for losses and subtracted from the total territory load (for each Load Zone) to determine a net territory load for each Load Zone. Account loads for estimation are then aggregated by supplier ID by Load Zone. Hourly ratios are developed for each supplier based on the supplier's estimated total load to the total estimated load within each Load Zone. The hourly supplier ratios are applied to the net territory load (for each Load Zone) to calculate each suppliers contribution to the net Load Zone load. When telemetered load is available, it will be added back in at this point (with losses).

Final estimated supplier values (by Load Zone) are then posted to the ISO Reporting Application ("IRA") System for transmission to the ISO.

### **2. Reporting Of Suppliers' Loads To The ISO**

The total hourly load estimates for each supplier's Load Assets are reported to the ISO, in accordance with the ISO standards, for use in the ISO wholesale settlement process.

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### **3. Monthly Reconciliation**

The ISO's meter adjustment process requires the re-submittal of hourly data. Territory loads (by Load Zone) may change due to corrections to hourly generation and interchange metered values. Note: the day after reporting of loads may have required directly metered values to be estimated because of equipment / communication problems. These changes will be submitted to the ISO within a 45-day period following the ISO's bill for the month. For example, if the ISO issues its March 2004 bill on April 15, Participants must submit revised hourly data for interchange metering by May 30, 2004. The revised hourly meter data will result in changes to NSTAR Electric's calculated hourly territory load values (BECO NEMA, BECO SEMA, Commonwealth (SEMA) & Cambridge (NEMA)). Revised territory loads are then input to the Load Reconciliation process.

Supplier's estimated loads must be reconciled to their Customers' metered usage and submitted to the ISO 80 days after the ISO's bill for the month. Each NSTAR Electric entity uses its customers' actual meter readings, to the extent that they are available, to re-estimate each supplier's hourly loads (by Load Zone) and report the appropriate load assets to the ISO.

The reconciliation methodology is same as the load estimation methodology (actual billing data used instead of latest billing data).

For time of use customers, the actual interval data for the calendar month will be used for reconciliation when available.

Each supplier's reconciled hourly loads are reported to the ISO for resettlement.

### **4. ICAP**

The ISO requires ICAP contributions (by Load Asset) to be calculated each day based on the previous power year's historical peak. Reference Market Rule 1 and related Market Manuals for specific details.

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**APPENDIX B.  
COMPANY**

**CONTRACT SERVICE RATE: BOSTON EDISON**

	Contract Service Rate
January 2004	\$60.40/MWh
February 2004	\$59.70/MWh
March 2004	\$53.00/MWh
April 2004	\$49.30/MWh
May 2004	\$46.45/MWh
June 2004	\$48.50/MWh
July 2004	\$57.85/MWh
August 2004	\$57.60/MWh
September 2004	\$47.25/MWh
October 2004	\$45.75/MWh
November 2004	\$47.25/MWh
December 2004	\$48.45/MWh

**CONTRACT SERVICE RATE : CAMBRIDGE ELECTRIC LIGHT COMPANY**

	Contract Service Rate
January 2004	\$60.55/MWh
February 2004	\$59.95/MWh
March 2004	\$53.25/MWh
April 2004	\$49.60/MWh
May 2004	\$47.15/MWh
June 2004	\$49.25/MWh
July 2004	\$58.55/MWh
August 2004	\$58.35/MWh
September 2004	\$47.85/MWh
October 2004	\$46.00/MWh
November 2004	\$47.45/MWh
December 2004	\$48.60/MWh

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**CONTRACT SERVICE RATE: COMMONWEALTH ELECTRIC COMPANY**

	Contract Service Rate
January 2004	\$57.55/MWh
February 2004	\$57.00/MWh
March 2004	\$50.65/MWh
April 2004	\$47.40/MWh
May 2004	\$44.35/MWh
June 2004	\$45.70/MWh
July 2004	\$53.30/MWh
August 2004	\$53.15/MWh
September 2004	\$44.95/MWh
October 2004	\$44.00/MWh
November 2004	\$45.50/MWh
December 2004	\$46.40/MWh

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**APPENDIX C.      CONTRACT PPA RATE**

	Contract PPA Rate
January 2004	\$52.15/MWh
February 2004	\$51.60/MWh
March 2004	\$45.60/MWh
April 2004	\$41.85/MWh
May 2004	\$39.30/MWh
June 2004	\$40.20/MWh
July 2004	\$47.55/MWh
August 2004	\$47.35/MWh
September 2004	\$39.70/MWh
October 2004	\$38.75/MWh
November 2004	\$40.35/MWh
December 2004	\$40.80/MWh

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## APPENDIX D.

## GUARANTEE AGREEMENT

This Guaranty Agreement (the "Guarantee") is made by Constellation Energy Group, Inc. ("Guarantor"), a Maryland corporation, in favor of Boston Edison Company ("BECO"), Commonwealth Electric Company ("Commonwealth") and Cambridge Electric Light Company ("Cambridge") (together, "NSTAR Electric") all wholly owned subsidiaries of NSTAR, with a principal place of business at 800 Boylston Street, Boston, MA 02199 ("Counterparty").

WHEREAS, Constellation Power Source, Inc., a Delaware corporation ("CPS") and Counterparty are parties to that certain Standard Offer Service Power Supply Agreement ("Agreement") dated as of \_\_\_\_\_, 2003 (the "Agreement")

WHEREAS, Guarantor is the direct or indirect parent of CPS and will receive substantial and direct benefits from the extensions of credit contemplated by the Agreement and has agreed to enter into this Guaranty to provide assurance for the performance of CPS' obligations in connection with the Agreement and to induce the Counterparty to enter into the Agreement; and

WHEREAS, the execution and delivery of this Guaranty is a condition to Counterparty's further performance of its obligations under the terms of the Agreement.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the adequacy, receipt and sufficiency of which are hereby acknowledged, Guarantor hereby agrees as follows:

1. **Guaranty.** Guarantor hereby unconditionally and absolutely guarantees the punctual payment when due of CPS' payment obligations arising under the Agreement, as such Agreement may be amended or modified from time to time, (collectively, the "Guaranteed Obligations"); provided, however, that the total liability of Guarantor hereunder, regardless of any amendment or modification to the Agreement, is limited to the lesser of (a) all amounts owed by CPS to Counterparty under the Agreement, or (b) Twenty Five Million United States Dollars (\$25,000,000) ("Liability Cap"). Guarantor's obligations and liability under this Guaranty shall be limited to payment obligations only and Guarantor shall have no obligation to perform under the Agreement, including, without limitation, to sell, deliver, supply or transport gas, electricity or any other commodity.

2. **Guaranty Absolute.** The liability of Guarantor under this Guaranty shall be absolute and unconditional irrespective of:

- (a) any lack of validity or enforceability of or defect or deficiency applicable to CPS in the Agreement or any other documents executed in connection with the Agreement; or
- (b) any modification, extension or waiver of any of the terms of the Agreement; or
- (c) any change in the time, manner, terms or place of payment of or in any other term of, all or any of the Guaranteed Obligations, or any other amendment or waiver of or any consent to departure from the Agreement or any other agreement or instrument executed in connection therewith; or
- (d) except as to applicable statutes of limitation, failure, omission, delay, waiver or refusal by Counterparty to exercise, in whole or in part, any right or remedy held by Counterparty with respect to the Agreement; or



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(e) any change in the existence, structure or ownership of Guarantor or CPS or any insolvency, bankruptcy, reorganization or other similar proceeding affecting CPS or its assets.

The obligations of the Guarantor hereunder are several from CPS or any other person, and are primary obligations concerning which the Guarantor is the principal obligor. There are no conditions precedent to the enforcement of this Guaranty, except as expressly contained herein. It shall not be necessary for Counterparty, in order to enforce payment by Guarantor under this Guaranty, to show any proof of CPS' default, to exhaust its remedies against CPS, any other guarantor, or any other person liable for the payment or performance of the Guaranteed Obligations.

This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations are annulled, set aside, invalidated, declared to be fraudulent or preferential, rescinded or must otherwise be returned, refunded or repaid by Counterparty upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of CPS or any other guarantor, or upon or as a result of the appointment of a receiver or conservator of, or trustee for CPS or any other guarantor or any substantial part of its property or otherwise, all as though such payment or payments had not been made.

3. **Waiver.** This is a guaranty of payment and not of collection. Guarantor hereby waives:

(a) notice of acceptance of this Guaranty, of the creation or existence of any of the Guaranteed Obligations and of any action by Counterparty in reliance hereon or in connection herewith;

(b) notice of the entry into the Agreement between CPS and Counterparty and of any amendments, supplements or modifications thereto; or any waiver of consent under the Agreement, including waivers of the payment and performance of the obligations thereunder;

(c) notice of any increase, reduction or rearrangement of CPS' obligations under the Agreement or any extension of time for the payment of any sums due and payable to the Counterparty under the Agreement;

(d) except as expressly set forth herein, presentment, demand for payment, notice of dishonor or nonpayment, protest and notice of protest or any other notice with respect to the Guaranteed Obligations; and

(e) any requirement that suit be brought against, or any other action by Counterparty be taken against, or any notice of default or other notice be given to, or any demand be made on CPS or any other person, or that any other action be taken or not taken as a condition to Guarantor's liability for the Guaranteed Obligations under this Guaranty or as a condition to the enforcement of this Guaranty against Guarantor.

4. **Expenses.** Subject to the limit on Guarantor's liability hereunder set forth in Section 1, Guarantor agrees to pay on demand any and all out-of-pocket costs subject to the Liability Cap, including reasonable legal fees and expenses, and other expenses incurred by Counterparty in enforcing Guarantor's payment obligations under this Guaranty; provided that the Guarantor shall not be liable for any expenses of Counterparty if it is not successful in such enforcement action.

5. **Subrogation.** Guarantor shall be subrogated to all rights of Counterparty against CPS in respect of any amounts paid by Guarantor pursuant to the Guaranty, provided that Guarantor waives any rights it may acquire by way of subrogation under this Guaranty, by any payment made hereunder or otherwise (including, without limitation, any statutory rights of subrogation under Section 509 of the Bankruptcy Code, 11 U.S.C. § 509, or otherwise), reimbursement, exoneration, contribution, indemnification, or any right to participate in any claim or remedy of Counterparty against any collateral which Counterparty now has or acquires, until all of the Guaranteed Obligations shall have been irrevocably

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paid to Counterparty in full. If any amount shall be paid to the Guarantor on account of such subrogation rights at any time when all the Guaranteed Obligations in default shall not have been paid in full, such amount shall be held in trust for the benefit of Counterparty and shall forthwith be paid to Counterparty to be applied to the Guaranteed Obligations. If (a) the Guarantor shall perform and shall make payment to Counterparty of all or any part of the Guaranteed Obligations and (b) all the Guaranteed Obligations shall have been paid in full, Counterparty shall, at the Guarantor's request, execute and deliver to the Guarantor appropriate documents necessary to evidence the transfer by subrogation to the Guarantor of any interest in the Guaranteed Obligations resulting from such payment by Guarantor.

6. **Reservation of Defenses.** Guarantor agrees that except as expressly set forth herein, it will remain bound upon this Guarantee notwithstanding any defenses which, pursuant to the laws of suretyship, would otherwise relieve a guarantor of its obligations under a guarantee. Guarantor does reserve the right to assert defenses which CPS may have to payment of any Guaranteed Obligation other than defenses arising from the bankruptcy or insolvency of CPS and other defenses expressly waived hereby.

7. **Notices.** All demands, notices and other communications provided for hereunder shall, unless otherwise specifically provided herein, (a) be in writing addressed to the party receiving the notice at the address set forth below or at such other address as may be designated by written notice, from time to time, to the other party, and (b) be effective upon receipt, when mailed by U.S. mail, registered or certified, return receipt requested, postage prepaid, facsimile or personally delivered. Notices shall be sent to the following addresses:

If to Counterparty:

Mr. Robert H. Martin  
Director, Electric & Gas Contract Administration  
NSTAR Electric & Gas Corporation  
One NSTAR Way NE220  
Westwood, MA 02090  
(781) 441-8058  
(781) 441-8053 (fax)

With a copy to:

NSTAR Electric & Gas Corporation  
800 Boylston Street  
Boston, MA 02199  
Attention: Timothy Cronin  
(671) 424-2104  
(617) 424-2733 (fax)

If to Guarantor:

Constellation Energy Group, Inc.  
750 East Pratt St., 17<sup>th</sup> Floor  
Baltimore, MD 21202  
Attn: Thomas E. Ruszin, Jr.  
Vice President, Treasurer and Assistant Secretary  
Phone: 410-783-3610  
Fax: 410-783-3619

With a copy to:

Constellation Power Source, Inc.  
111 Market Place, Suite 500

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Baltimore, Maryland 21202  
Attn: Khalid Abedin  
Phone: 410-468-3410  
Fax: 410-468-3419

8. **Demand and Payment.** Any demand by Counterparty for payment hereunder shall be in writing, signed by a duly authorized representative of Counterparty and delivered to the Guarantor pursuant to Section 7 hereof, and shall (a) reference this Guaranty, (b) specifically identify CPS, the nature of the default, the Guaranteed Obligations to be paid and the amount of such Guaranteed Obligations and (c) set forth payment instructions, including bank name, routing number and bank account number. There are no other requirements of notice, presentment or demand. Guarantor shall pay, or cause to be paid, such Guaranteed Obligations within ten (10) business days of receipt of such demand.

9. **No Waiver; Remedies.** Except as to applicable statutes of limitation, no failure on the part of Counterparty to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

10. **Term: Termination.** This Guaranty shall continue in full force and effect until all of the Guaranteed Obligations are satisfied.

11. **Assignment: Successors and Assigns.** Counterparty may, upon notice to Guarantor, assign its rights hereunder without the consent of Guarantor. Guarantor may assign its rights hereunder with the prior written consent of Counterparty, which consent shall not be unreasonably withheld. Subject to the foregoing, this Guaranty shall be binding upon and inure to the benefit of the parties hereto and their respective successors, permitted assigns, and legal representatives.

12. **Amendments, Etc.** A written amendment executed by the Guarantor only may (a) increase the guaranty limit specified in Section 1 and/or (b) extend the termination date of this Guaranty. No other amendment of this Guaranty shall be effective unless in writing and signed by Guarantor and Counterparty. No waiver of any provision of this Guaranty nor consent to any departure by Guarantor therefrom shall in any event be effective unless such waiver shall be in writing and signed by Counterparty. Any such waiver shall be effective only in the specific instance and for the specific purpose for which it was given.

13. **Captions.** The captions in this Guaranty have been inserted for convenience only and shall be given no substantive meaning or significance whatsoever in construing the terms and provisions of this Guaranty.

14. **Representation and Warranties.**

The Guarantor represents and warrants as follows:

(a) The Guarantor is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has full corporate power to execute, deliver and perform this Guaranty.

(b) The execution, delivery and performance of this Guaranty have been and remain duly authorized by all necessary corporate action and do not contravene the Guarantor's constitutional documents or any contractual restriction binding on the Guarantor or its assets.

(c) This Guaranty constitutes the legal, valid and binding obligation of the Guarantor enforceable against Guarantor in accordance with its terms, subject, as to enforcement, to bankruptcy,

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insolvency) reorganization and other laws of general applicability relating to or affecting Counterparty's rights and to general equity principles.

16. **Limitation by Law.** All rights, remedies and powers provided in this Guaranty may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law, and all the provisions of this Guaranty are intended to be subject to all applicable mandatory provisions of law that may be controlling and to be limited to the extent necessary so that they will not render this Guaranty invalid, unenforceable, in whole or in part, or not entitled to be recorded, registered or filed under the provisions of any applicable law.

17. **Confidentiality.** The Counterparty shall keep the existence and the terms of this Guaranty confidential. The Counterparty shall only disclose the existence of this Guaranty to those officers, directors and employees and agents who have a need to know and who agree to keep the existence and terms of this Guaranty confidential. The Counterparty shall be responsible for any breach of this confidentiality provision by its officers, directors and employees and agents.

18. **GOVERNING LAW; SUBMISSION TO EXCLUSIVE JURISDICTION. THIS GUARANTY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK AND APPLICABLE FEDERAL LAW.**

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be duly executed and delivered by its duly authorized officer effective as of this \_\_\_\_ day of \_\_\_\_\_, 2003 ("Effective Date").

Guarantor: Constellation Energy Group, Inc.

By: \_\_\_\_\_

Name:

Title:

**APPENDIX E.****PPA****BOSTON EDISON COMPANY**

<b>PPA</b>	<b>PPA DELIVERY POINT</b>
<b>Masspower</b> <ul style="list-style-type: none"><li>• Power Purchase Agreement between BECo and MASSPOWER dated October 15, 1990.</li><li>• First Amendment to Power Purchase Agreement dated August 18, 1995 by and between MASSPOWER and BECo that amends a Power Purchase Agreement dated October 15, 1990.</li><li>• Settlement Agreement and Release, dated June 20, 2001</li></ul>	LD.N_WOBURN115 110A LD <sup>1</sup> LD.N_WOBURN115 110B D.WOBURN 115 LD.MYSTIC 115 LD.CHELSEA 115 LD.W_FRMHAM 115 LD.MEDWAY 115 LD.WALTHAM115 LD.FRAMNGHM 115 LD.CANTN_BE 115 LD.WALPOLE 115 LD.DOVER_BE 115 LD.NEEDHAM 115
<b>MBTA 1</b> <ul style="list-style-type: none"><li>• Agreement by and between the Massachusetts Bay Transportation Authority and the BECo for the sale of capacity and energy from a combustion turbine unit dated May 8, 1986.</li><li>• First Amendment to Agreement between the Massachusetts Bay Transportation Authority and BECo for the sale of Capacity and Energy from a Combustion Turbine Unit dated September 15, 1998.</li><li>• General Release and Settlement Agreement dated September 15, 1998 between BECo and Massachusetts Bay Transportation Authority.</li></ul>	K-Street substation, currently listed by the ISO as Node 4092 LD.K_STREET115 in the NEMA zone
<b>MBTA 2</b>	

<sup>1</sup> NSTAR Electric has assigned the listed nodes as the PPA Delivery Point on an interim basis. Such Delivery Point is subject to change based on the outcome of the dispute proceeding referenced in Schedule 18.2 to this Agreement. NSTAR Electric and Supplier agree that if the order, judgment, award or other final resolution of such dispute results in a change in the referenced PPA Delivery Points listed in this Appendix E, and Supplier incurs additional costs associated with such change in PPA Delivery Point(s) during the Term, then NSTAR Electric shall reimburse Supplier for such actual, documented additional costs.

<ul style="list-style-type: none"> <li>• Agreement by and between the Massachusetts Bay Transportation Authority and the BECo for the sale of capacity and energy from a combustion turbine unit dated March 17, 1993.</li> <li>• First Amendment to Agreement between the Massachusetts Bay Transportation Authority and BECo for the sale of capacity and energy from a combustion turbine unit dated December 6, 1995.</li> <li>• Second Amendment to Agreement between the Massachusetts Bay Transportation Authority and BECo for the sale of capacity and energy from a combustion turbine unit dated September 15, 1998.</li> <li>• General Release and Settlement Agreement dated September 15, 1998 between BECo and the Massachusetts Bay Transportation Authority.</li> </ul>	K-Street substation, currently listed by the ISO as Node 4092 LD.K_STREET115 in the NEMA zone
<p><b>Northeast Energy Associates A<sup>2</sup></b></p> <ul style="list-style-type: none"> <li>• Power Purchase Agreement between Northeast Energy Associates and BECo dated April 1, 1986.</li> <li>• First Amendment to Power Purchase Agreement between BECo and Northeast Energy Associates dated June 8, 1987</li> <li>• Second Amendment to Power Purchase Agreement dated June 21, 1989 between BECo and Northeast Energy Associates.</li> <li>• Third Amendment to Power Purchase Agreement between BECo and Northeast Energy Associates dated August 31, 1990.</li> </ul>	Medway substation, currently listed by the ISO as Node 4119 LD. MEDWAY 115 in the SEMA Zone. <sup>3</sup>
<p><b>Northeast Energy Associates B<sup>4</sup></b></p> <ul style="list-style-type: none"> <li>• Power Purchase Agreement between Northeast Energy Associates and BECo dated January 28, 1988.</li> </ul>	Node 507 Bellingham 13.2 in the SEMA Zone.

<sup>2</sup> Classified an "Intermittent Resource" by ISO-NE.

<sup>3</sup> NSTAR Electric has assigned the listed nodes as the PPA Delivery Point on an interim basis. Such Delivery Point is subject to change based on the outcome of the dispute proceeding referenced in Schedule 18.2 to this Agreement. NSTAR Electric and Supplier agree that if the order, judgment, award or other final resolution of such dispute results in a change in the referenced PPA Delivery Points listed in this Appendix E, and Supplier incurs additional costs associated with such change in PPA Delivery Point(s) during the Term, then NSTAR Electric shall reimburse Supplier for such actual, documented additional costs.

<ul style="list-style-type: none"> <li>• First Amendment to Power Purchase Agreement "B" dated June 21, 1989 between BECo and Northeast Energy Associates.</li> </ul>	
<p><b>Ocean State 1</b></p> <ul style="list-style-type: none"> <li>• Unit Power Agreement for the Sale of Unit Capacity and Energy from Ocean State Power to BECo dated December 31, 1985.</li> <li>• First Amendment to Unit Power Agreement for the Sale of Unit Capacity and Energy from Ocean State Power to BECo dates April 1, 1986.</li> <li>• Second Amendment to Unit Power Agreement for the Sale of Unit Capacity and Energy from Ocean State Power to BECo dates April 30, 1986.</li> <li>• Third Amendment to Unit Power Agreement for the Sale of Unit Capacity and Energy from Ocean State Power to BECo dates May 21, 1986.</li> <li>• Fourth Amendment to Unit Power Agreement for the Sale of Unit Capacity and Energy from Ocean State Power to BECo dates August 20, 1986.</li> <li>• Fifth Amendment to Unit Power Agreement for the Sale of Unit Capacity and Energy from Ocean State Power to BECo dates July 1, 1988.</li> <li>• Sixth Amendment to Unit Power Agreement for the Sale of Unit Capacity and Energy from Ocean State Power to BECo dates September 26, 1988.</li> <li>• Seventh Amendment to Unit Power Agreement for the Sale of Unit Capacity and Energy from Ocean State Power to BECo dates October 21, 1988.</li> <li>• Eighth Amendment to Unit Power Agreement for the Sale of Unit Capacity and Energy from Ocean State Power to BECo dates July 21, 1989.</li> <li>• Ninth Amendment to Unit Power Agreement for the Sale of Unit Capacity and Energy from Ocean State Power to BECo dates</li> </ul>	<p>Interconnection between the facility and the PTF, currently listed by the ISO as Node 528 UN.OCEAN_ST13.8OSP1 in the Rhode Island zone</p>

<sup>4</sup> Classified an "Intermittent Resource" by ISO-NE

<p>February 7, 1990.</p> <ul style="list-style-type: none"> <li>• Tenth Amendment to Unit Power Agreement for the Sale of Unit Capacity and Energy from Ocean State Power to BECo dates December 21, 1990.</li> <li>• Eleventh Amendment to Unit Power Agreement for the Sale of Unit Capacity and Energy from Ocean State Power to BECo dates February 12, 1996.</li> </ul>	
<p><b>Ocean State 2</b></p> <ul style="list-style-type: none"> <li>• Unit Power Agreement for the Sale of Unit 2 Capacity and Energy from Ocean State Power to BECo dated July 1, 1988.</li> <li>• First Amendment to Unit Power Agreement for the Sale of Unit 2 Capacity and Energy from Ocean State Power to BECo dated September 26, 1988.</li> <li>• Second Amendment to Unit Power Agreement for the Sale of Unit 2 Capacity and Energy from Ocean State Power to BECo dated July 21, 1989.</li> <li>• Supplemental Agreement to the Unit Power Agreement for the Sale of Unit 2 Capacity and Energy between Ocean State Power II and BECo dated July 21, 1989.</li> <li>• Third Amendment to Unit Power Agreement for the Sale of Unit 2 Capacity and Energy from Ocean State Power to BECo dated February 7, 1990.</li> <li>• Fourth Amendment to Unit Power Agreement for the Sale of Unit 2 Capacity and Energy from Ocean State Power to BECo dated February 12, 1996.</li> </ul>	<p>Interconnection between the facility and the PTF, currently listed by the ISO as Node 529 UN.OCEAN_ST13.8OSP2 in the Rhode Island zone</p>
<p><b>Pilgrim</b></p> <ul style="list-style-type: none"> <li>• Power Purchase Agreement between Entergy Nuclear Generation Company and BECo for Pilgrim Nuclear Power Station November 18, 1998.</li> </ul>	<p>Interconnection between the facility and the PTF, currently listed by the ISO as Node 537 UN.PILGRIM 22.8 PILG in the SEMA zone</p>
<p><b>Pilgrim</b></p> <ul style="list-style-type: none"> <li>• Power Purchase Agreement with Respect to Municipal Entitlements between Entergy Nuclear Generation Company and BECo for Pilgrim Nuclear Power Station dated November 18, 1998.</li> </ul>	<p>Interconnection between the facility and the PTF, currently listed by the ISO as Node 537 UN.PILGRIM 22.8 PILG in the SEMA zone</p>



## COMMONWEALTH ELECTRIC COMPANY

PPA	PPA DELIVERY POINT
<b>Altresco</b> <ul style="list-style-type: none"> <li>• Power Sale Agreement by and between Altresco Pittsfield, L.P. and Commonwealth dated February 20, 1992.</li> <li>• Amendment to Power Sale Agreement by and between Commonwealth and Altresco Pittsfield, LP dated November 7, 1994.</li> <li>• Second Amendment to Power Purchase Agreement between Commonwealth and Pittsfield Generating Company, L.P. dated November 21, 1996.</li> </ul>	LD.SANDWICH115 <sup>5</sup> LD.INDSTLPK115 LD.FISHR_RD 115 LD.CROSS_RD 115 109X LD LD.CROSS_RD115111X LD LD.W_POND115 116X LD LD.W_POND115 117X LD LD.KINGSTON115 LD.TREMONT115
<b>Boot Hydro<sup>6</sup>:</b> <ul style="list-style-type: none"> <li>• Power Sale Agreement between Commonwealth and Corporation Investments, Inc. dated January 10, 1983.</li> <li>• Amendment dated March 6, 1985.</li> </ul>	Sandwich, MA, currently listed by the ISO as Node 4229 LD.SANDWICH115 in the SEMA zone
<b>Chicopee:</b> <ul style="list-style-type: none"> <li>• Power Sale Agreement between Commonwealth and Swift River Company dated September 1, 1983.</li> <li>• Amendment (letter supplementing the September 1, 1983 Agreement) dated February 1, 1984.</li> </ul>	Sandwich, MA, currently listed by the ISO as Node 4229 LD.SANDWICH115 in the SEMA zone
<b>Collins:</b> <ul style="list-style-type: none"> <li>• Power Sale Agreement between Commonwealth and Swift River Company dated September 1, 1983, as supplemented February 1, 1984.</li> </ul>	Sandwich, MA, currently listed by the ISO as Node 4229 LD.SANDWICH115 in the SEMA zone

<sup>5</sup> NSTAR Electric has assigned the listed nodes as the PPA Delivery Point on an interim basis. Such Delivery Point is subject to change based on the outcome of the dispute proceeding referenced in Schedule 18.2 to this Agreement. NSTAR Electric and Supplier agree that if the order, judgment, award or other final resolution of such dispute results in a change in the referenced PPA Delivery Points listed in this Appendix E, and Supplier incurs additional costs associated with such change in PPA Delivery Point(s) during the Term, then NSTAR Electric shall reimburse Supplier for such actual, documented additional costs.

<sup>6</sup> Classified an "Intermittent Resource" by ISO-NE

<p><b>Dartmouth:</b></p> <ul style="list-style-type: none"> <li>• Power Purchase Agreement between Commonwealth and Dartmouth Power Associates Limited Partnership dated September 5, 1989.</li> <li>• Amendment to Power Purchase Agreement between Commonwealth and Dartmouth Power Associates Limited Partnership dated August 3, 1990.</li> <li>• Second Amendment to Power Purchase Agreement between Commonwealth and Dartmouth Power Associates Limited Partnership dated June 23, 1994.</li> <li>• Third Amendment to Power Purchase Agreement between Commonwealth and Dartmouth Power Associates Limited Partnership dated April 25, 1996.</li> </ul>	<p>Interconnection between the facility and Commonwealth's system, currently listed by the ISO as Node 388 UN.DARTMTH 13.8 DART in the SEMA zone</p>
<p><b>Masspower 1:</b></p> <ul style="list-style-type: none"> <li>• Power Purchase Agreement between MASSPOWER and Commonwealth dated December 3, 1990.</li> <li>• First Amendment to Power Purchase Agreement between MASSPOWER and Commonwealth dated July 21, 1995.</li> <li>• Second Amendment to Power Purchase Agreement between MASSPOWER and Commonwealth dated August 20, 1996</li> <li>• Settlement Agreement and Release, dated June 20, 2001</li> </ul>	<p>LD.SANDWICH115<sup>7</sup> LD.INDSTLPK115 LD.FISHR_RD 115 LD.CROSS_RD 115 109X LD LD.CROSS_RD115111X LD LD.W_POND115 116X LD LD.W_POND115 117X LD LD.KINGSTON115</p>
<p><b>Masspower 2:</b></p> <ul style="list-style-type: none"> <li>• Power Purchase Agreement between MASSPOWER and Commonwealth dated February 14, 1992.</li> <li>• First Amendment to Power Purchase Agreement between MASSPOWER and Commonwealth dated July 21, 1995.</li> </ul>	<p>LD.SANDWICH115<sup>8</sup> LD.INDSTLPK115 LD.FISHR_RD 115 LD.CROSS_RD 115 109X LD LD.CROSS_RD115111X LD LD.W_POND115 116X LD</p>

<sup>7</sup> NSTAR Electric has assigned the listed nodes as the PPA Delivery Point on an interim basis. Such Delivery Point is subject to change based on the outcome of the dispute proceeding referenced in Schedule 18.2 to this Agreement. NSTAR Electric and Supplier agree that if the order, judgment, award or other final resolution of such dispute results in a change in the referenced PPA Delivery Points listed in this Appendix E, and Supplier incurs additional costs associated with such change in PPA Delivery Point(s) during the Term, then NSTAR Electric shall reimburse Supplier for such actual, documented additional costs.

<ul style="list-style-type: none"> <li>• Second Amendment to Power Purchase Agreement between MASSPOWER and Commonwealth dated August 20, 1996.</li> <li>• Settlement Agreement and Release, dated June 20, 2001</li> </ul>	LD.W_POND115 117X LD LD.KINGSTON115
<b>Northeast Energy Associates 1<sup>9</sup>:</b> <ul style="list-style-type: none"> <li>• Power Sale Agreement "1" between Commonwealth and Northeast Energy Associates Limited Partnership dated November 26, 1986.</li> <li>• First Amendment to Power Sale Agreement "1" between Commonwealth and Northeast Energy Associates Limited Partnership dated August 15, 1988.</li> <li>• Second Amendment to Power Sale Agreement "1" between Commonwealth and Northeast Energy Associates Limited Partnership dated January 1, 1989</li> </ul>	Sandwich, MA, currently listed by the ISO as Node 4229 LD.SANDWICH115 in the SEMA zone
<b>Northeast Energy Associates 2<sup>10</sup>:</b> <ul style="list-style-type: none"> <li>• Power Sale Agreement "2" between Commonwealth and Northeast Energy Associates Limited Partnership dated August 15, 1988</li> <li>• Amendment to Power Sale Agreement "2" between Commonwealth and Northeast Energy Associates Limited Partnership dated January 1, 1989.</li> </ul>	Sandwich, MA, currently listed by the ISO as Node 4229 LD.SANDWICH115 in the SEMA zone
<b>Pilgrim:</b> <ul style="list-style-type: none"> <li>• Power Purchase Agreement between Entergy Nuclear Generation Company and Commonwealth for Pilgrim Nuclear Power Station dated November 18, 1998.</li> <li>• Amended Agreement dated August 4, 2003.</li> </ul>	Interconnection between the facility and the PTF, currently listed by the ISO as Node 537 UN.PILGRIM 22.8PILG in the SEMA zone
<b>Pioneer:</b>	

<sup>8</sup> NSTAR Electric has assigned the listed nodes as the PPA Delivery Point on an interim basis. Such Delivery Point is subject to change based on the outcome of the dispute proceeding referenced in Schedule 18.2 to this Agreement. NSTAR Electric and Supplier agree that if the order, judgment, award or other final resolution of such dispute results in a change in the referenced PPA Delivery Points listed in this Appendix E, and Supplier incurs additional costs associated with such change in PPA Delivery Point(s) during the Term, then NSTAR Electric shall reimburse Supplier for such actual, documented additional costs.

<sup>9</sup> Classified an "Intermittent Resource" by ISO-NE

<sup>10</sup> Classified an "Intermittent Resource" by ISO-NE

<ul style="list-style-type: none"> <li>• Agreement between Commonwealth and Pioneer Hydropower, Inc. September 1, 1983, as supplemented February 1, 1984.</li> <li>• Amendment to Power Sale Agreement between Pioneer Hydropower, Inc. and Commonwealth dated December 22, 1997.</li> </ul>	<p>Sandwich, MA, currently listed by the ISO as Node 4229 LD.SANDWICH115 in the SEMA zone</p>
<p><b>SEMASS<sup>11</sup>:</b></p> <ul style="list-style-type: none"> <li>• Power Sale Agreement between SEMASS Partnership and Commonwealth dated September 8, 1981.</li> <li>• Power Sale Agreement for SEMASS Expansion between Commonwealth and SEMASS Partnership dated January 15, 1988.</li> <li>• First Amendment to Power Sale Agreement for SEMASS Expansion between Commonwealth and SEMASS Partnership dated March 14, 1990.</li> <li>• Second Amendment to Power Sale Agreement for SEMASS Expansion between Commonwealth and SEMASS Partnership dated May 24, 1991.</li> </ul>	<p>Interconnection between the facility and Commonwealth's system, currently listed by the ISO as Node 563 UN.SEMASS 115 SEM1 in the SEMA zone</p> <p>SEMASS Expansion: Interconnection between the facility and Commonwealth's system, currently listed by the ISO as Node 564 UN.SEMASS 115SEM2 in the SEMA zone</p>

<sup>11</sup> Classified an "Intermittent Resource" by ISO-NE

## CAMBRIDGE ELECTRIC LIGHT COMPANY

PPA	PPA DELIVERY POINT
<p><b>Altresco</b></p> <ul style="list-style-type: none"> <li>• Power Sale Agreement by and between Altresco Pittsfield, L.P. and Cambridge dated February 20, 1992.</li> <li>• Amendment to Power Sale Agreement by and between Cambridge and Altresco Pittsfield, LP dated November 7, 1994.</li> <li>• Second Amendment to Power Purchase Agreement between Cambridge and Pittsfield Generating Company, L.P. dated November 21, 1996.</li> </ul>	<p>LD.ALEWIFE 13.8<sup>12</sup> LD.PUTNAM 13.8</p>
<p><b>Vermont Yankee</b></p> <ul style="list-style-type: none"> <li>• Power Contract dated February 1, 1968 between Vermont Yankee Nuclear Power Corporation and the companies listed in the appendix. These companies are: Vermont Yankee Nuclear Power Corporation, Central Vermont Public Service Corporation, Green Mountain Power Corporation, New England Power Company, The Connecticut Light and Power Company, Central Maine Power Company, Public Service Company of New Hampshire, The Hartford Electric Light Company, Western Massachusetts Electric Company, Montaup Electric Company and Cambridge.</li> <li>• Amendment dated as of June 1, 1972 between Vermont Yankee Nuclear Power Corporation and Cambridge to the Power Contract dated as of February 1, 1968.</li> <li>• Amendment #2 to Vermont Yankee Power Contract dated April 15, 1983 between</li> </ul>	<p>Interconnection between the facility and the PTF, currently listed by the ISO as Node 611 UN.VT_YK 20.9VTYA in the Vermont zone.</p>

<sup>12</sup> NSTAR Electric has assigned the listed nodes as the PPA Delivery Point on an interim basis. Such Delivery Point is subject to change based on the outcome of the dispute proceeding referenced in Schedule 18.2 to this Agreement. NSTAR Electric and Supplier agree that if the order, judgment, award or other final resolution of such dispute results in a change in the referenced PPA Delivery Points listed in this Appendix E, and Supplier incurs additional costs associated with such change in PPA Delivery Point(s) during the Term, then NSTAR Electric shall reimburse Supplier for such actual, documented additional costs.

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Vermont Yankee Nuclear Power Corporation and Cambridge.

- Additional Power Contract dated as February 1, 1984 between Vermont Yankee Nuclear Power Corporation and Cambridge.
- Amendment #3 to Power Contract dated April 24, 1985 between Vermont Yankee Nuclear Power Corporation and Cambridge.
- Amendment #4 to Power Contract dated June 1, 1985 between Vermont Yankee Nuclear Power Corporation and Cambridge.
- Amendment #5 to Power Contract dated May 6, 1988 between Vermont Yankee Nuclear Power Corporation and Cambridge.
- Amendment #6 to Power Contract dated May 6, 1988 between Vermont Yankee Nuclear Power Corporation and Cambridge.
- Amendment #7 to Power Contract dated June 15, 1989 between Vermont Yankee Nuclear Power Corporation and Cambridge.
- Amendment #8 to Power Contract dated December 1, 1989 between Vermont Yankee Nuclear Power Corporation and Cambridge.
- 2001 Amendatory Agreement between Vermont Yankee Nuclear Power Corporation and Cambridge dated September 21, 2001.

## APPENDIX F. WHOLESALE AGREEMENTS

### BOSTON EDISON COMPANY

WHOLESALE AGREEMENT	COUNTERPARTY	TYPE OF AGREEMENT	TERMINATION DATE	DELIVERY POINT
<b><u>Massport Agreement</u></b> – That certain All Requirements Bulk Power Supply Contract and Service Agreement, dated January 31, 1996 by and between BECo and the Massachusetts Port Authority	<u>Massport</u>	<u>All requirements</u>	<u>October 31, 2005</u>	<u>A per section 1.3 of the Massport Agreement</u>
<b><u>Braintree Agreement</u></b> – That certain Contract Demand Agreement, dated August 19, 1993, amended on December 11, 1998 and further amended on August 26, 2003 by and between BECo and the Town of Braintree Electric Light Department.	<u>Town of Braintree Electric Light Department</u>	<u>Dispatchable</u>  <u>ICAP equals</u> <u>13.6275 MW</u> <u>(15.2950 MW</u> <u>after 11/1/03)</u> <u>Dispatchable</u> <u>System Contract</u> <u>Daily energy price</u> <u>calculated based</u> <u>upon Indexes:</u> <u>1% S New York</u> <u>Harbor Cargo</u> <u>(Platts) Henry</u> <u>Hub (Gas Daily)</u> <u>CPI for Urban</u> <u>Wage Earners and</u> <u>Clerical Workers</u> <u>for Boston</u>	<u>October 31, 2004</u>	<u>LD.Plain ST115</u>

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## **SCHEDULE 18.2**

### **PPA DISPUTES**

1. Dispute under the Power Purchase Agreement between BECo and MASSPOWER dated October 15, 1990, as amended, as described in the complaint in the case MASSPOWER, et al. v Boston Edison Company, filed in the Superior Court Department of the Trial Court of Massachusetts, Docket No. B.L.S. 03-4468.
2. Dispute under the Power Purchase Agreements between MASSPOWER and Commonwealth dated December 3, 1990, as amended, and dated February 14, 1992, as amended, as described in the correspondence dated February 6, 2003, March 6, 2003, April 11, 2003, June 12, 2003 and June 24, 2003.
3. Dispute under the Power Sale Agreement by and between Altresco Pittsfield, L.P. and Commonwealth dated February 20, 1992, as amended, as described in the correspondence dated February 6, 2003, March 1, 2003, April 11, 2003, June 12, 2003, June 23, 2003 and July 1, 2003.
4. Dispute under the Power Sale Agreement by and between Altresco Pittsfield, L.P. and Cambridge dated February 20, 1992, as amended, as described in the correspondence dated February 6, 2003, March 1, 2003, April 11, 2003, June 12, 2003, June 23, 2003 and July 1, 2003.
5. Dispute under the Power Sale Agreements by and between Northeast Energy Associates and Boston Edison Company dated April 1, 1986 and January 28, 1988, as amended, as described in the correspondence dated February 6, 2003, May 23, 2003 and August 8, 2003.
6. Dispute under the Power Sale Agreements by and between Northeast Energy Associates and Commonwealth Electric Company dated November 1, 1986 and August 15, 1988, as amended, as described in the correspondence dated February 6, 2003, May 23, 2003 and August 8, 2003.





## SUPPLEMENTAL AGREEMENT

THIS SUPPLEMENTAL AGREEMENT (the "Supplemental Agreement") is entered into as of the 24th day of June, 2004 by and among Boston Edison Company ("BECo"), Commonwealth Electric Company ("Commonwealth"), Cambridge Electric Light Company ("Cambridge") and Constellation Power Source, Inc. ("CPS"). BECo, Commonwealth, Cambridge and CPS are referred to herein individually as a "Party" and collectively as the "Parties". BECo, Commonwealth and Cambridge are collectively referred to herein as "NSTAR Electric".

### RECITALS

WHEREAS, NSTAR Electric and CPS are parties to a Standard Offer Service Power Supply Agreement dated as of November 3, 2003 (the "2004 SOS Agreement"), a Standard Offer Service Power Supply Agreement dated as of November 19, 2002 (the "2003 SOS Agreement") and a Power Supply Agreement dated as of September 6, 2001 (the "2002 SOS Agreement" and together with the 2004 SOS Agreement and the 2003 SOS Agreement, collectively, the "SOS Agreements"), pursuant to which NSTAR Electric sells and CPS purchases, among other things, all products, services and payments NSTAR Electric is entitled to pursuant to the PPAs described therein;

WHEREAS, certain of the NSTAR Electric PPA Counterparties have engaged in sales of gas or gas transportation services ("Gas Layoff Practices") whereby the quantity of electric energy produced and delivered to NSTAR Electric has been reduced from time to time, resulting in a corresponding shortfall in the quantities delivered to CPS under the SOS Agreements; and

WHEREAS, the Parties wish to provide for a methodology to calculate the amount of compensation to be paid to CPS in consideration of such delivery shortfalls.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Definitions. All capitalized terms have the meaning set forth herein, and if not defined herein, shall have the meaning set forth in the applicable SOS Agreement.

2. Term of Supplemental Agreement. This Supplemental Agreement shall be effective as of the date hereof and shall remain in effect through and including the end of the Term of the last SOS Agreement to expire or terminate.

3. Initial Shortfall Amount.

(a) In consideration for the Gas Layoff Practices described in this Section 3(a), on or before June 30, 2004 NSTAR Electric shall pay by wire transfer the sum of Eleven Million One Hundred and Thirty Nine Thousand Three Hundred and Fifty Three Dollars (\$11,139,353) (the

"Initial Shortfall Amount") to CPS in accordance with the wire transfer information to be provided to NSTAR Electric by CPS. The Initial Shortfall Amount represents the amount payable to CPS as a result of Gas Layoff Practices under the Ocean State 1 and Ocean State 2 PPAs (as described in Exhibit E to the 2004 SOS Agreement) during the period January 1, 2002 through and including April 30, 2004.

(b) If NSTAR Electric does not pay all of the Initial Shortfall Amount to CPS on or before the due date set forth in Section 3(a), then the unpaid portion shall accrue interest thereafter, up to and including the date of such payment, at an annual interest rate equal to the Prime Rate plus 2% per annum (the "Interest Rate").

(c) Effective upon actual receipt of the Initial Shortfall Amount, CPS hereby waives, remises, releases, and forever discharges BECo, Cambridge, Commonwealth and each of their respective affiliates, subsidiaries, successors or assigns, from all debts, demands, actions, causes of action, obligations and liabilities, and any and all other claims of every kind, nature and description whatsoever, both in law and equity, that CPS now has or ever had, relating to or arising from the Gas Layoff Practices and delivery shortfalls referenced in Section 3(a) of this Supplemental Agreement; provided, however, that nothing contained herein shall relieve BECo, Commonwealth and Cambridge or either of them from their obligations under this Supplemental Agreement and the SOS Agreements.

(d) Each of BECo, Commonwealth and Cambridge hereby waives, remises, releases, and forever discharges CPS and its respective affiliates, subsidiaries, successors or assigns, from all debts, demands, actions, causes of action, obligations and liabilities, and any and all other claims of every kind, nature and description whatsoever, both in law and equity, that BECo, Commonwealth and Cambridge or either of them now has or ever had against CPS, relating to or arising from the Gas Layoff Practices and delivery shortfalls referenced in Section 3(a) of this Supplemental Agreement; provided, however, that nothing contained herein shall relieve CPS from its obligations under this Supplemental Agreement and the SOS Agreements.

(e) Notwithstanding any provision to the contrary herein, effective upon actual receipt of the Initial Shortfall Amount, CPS shall be deemed to waive its right to compensation for Gas Layoff Practices under the two (Altresco) Pittsfield Generating PPAs (as described in Exhibit E to the 2004 SOS Agreement) during the period January 1, 2002 through and including December 31, 2004.

#### 4. Calculation of Monthly Shortfall Amount.

(a) In consideration for the Gas Layoff Practices for the period May 1, 2004 through and including the earlier of the termination of the 2004 SOS Agreement pursuant to the terms thereof; or the transfer of the Ocean State Power units to any other party pursuant to the terms of the 2004 SOS Agreement, NSTAR Electric shall pay a Monthly Shortfall Amount determined by this Section 4 and payable to CPS pursuant to the payment provisions of the 2004 SOS Agreement.

(b) In the event of a delivery shortfall as a result of the Gas Layoff Practices by a PPA Counterparty, NSTAR Electric shall pay CPS the Monthly Shortfall Amount, calculated for each calendar month as the product of (i) the Shortfall Quantity multiplied by (ii) the Shortfall Price, where:

- (i) “Shortfall Quantity” means, the quantity of gas resold in connection with a PPA less the quantity of gas sold during the period when the unit was on a Scheduled Outage (the “Scheduled Outage Quantity”) as reported to the ISO and CPS and determined in the manner described in (iii) below, multiplied by NSTAR Electric’s percentage ownership pursuant to such PPA, divided by the heat rate for the unit during such month as reported on the invoice provided by the PPA Counterparty to NSTAR Electric; and
- (ii) “Shortfall Price” means, (i) the product of (a) the Day-Ahead Hourly Locational Marginal Price for the Rhode Island Load Zone (for Location ID: 4005, Location Name: .Z.RHODEISLAND and Location Type: LOAD ZONE) and (b) the NEPOOL Hourly System Demand for such hour, summed for all hours during a calendar month, divided by the sum of the NEPOOL Hourly System Demand for all hours during such month, minus (ii) the Contract PPA Rate applicable to such month; and
- (iii) “Scheduled Outage Quantity” means, for each Ocean States Power unit, the ratio of the sum of the hourly MW unavailable during the Scheduled Outage as reported to the ISO and CPS divided by the sum of the hourly MW unit capability times 50,000 MMBTU/day times the number of days, or part thereof as applicable, that the unit is on Scheduled Outage.
- (iv) NSTAR Electric shall provide copies of invoices necessary to support any calculations required to calculate the Monthly Shortfall Amounts.

(c) In the event of a PPA Restructuring, the replacement methodology set forth in Section 4.3(e) of the 2004 SOS Agreement will govern the rights of the Parties, and no adjustments will be made to replacement calculations for Gas Layoff Practices, in each case, for the period commencing upon final implementation of such PPA Restructuring.

5. Confidentiality. Each of the Parties agrees, on behalf of itself and their respective attorneys, accountants, consultants and experts, that the terms and provisions of this Supplemental Agreement are and shall remain strictly confidential among them (and their attorneys, insurers, accountants and/or tax advisors or preparers, to the extent necessary) and shall not be disclosed to any third party for any reason except (a) to the extent disclosure is required by a subpoena issued from, or an order of, a court of competent jurisdiction, (b) to the Internal Revenue Service, or any State, Federal or Foreign Government or regulatory body or agency, if required by law, (c) to a regulatory body with jurisdictional authority over a Party for matters relating to the SOS Agreements or administration of the PPAs, (d) to any rating agency or other body reviewing the books and records of a Party if such disclosure is requested by the

agency or body; or (e) in connection with an action or arbitration commenced by a Party to enforce the terms of this Supplemental Agreement; provided, however, that no such disclosure pursuant to Section 5(a) through (d) hereof may be made without fourteen (14) days' prior written notice to the non-disclosing Party of the disclosure and the reason(s) therefor. Further, in the event any disclosure is required or permitted as described herein, the disclosing Party shall take all steps reasonably available to it to minimize the extent of disclosure to be made.

6. Conflicting Provisions. If any discrepancy or conflict arises or occurs with regard to anything in this Supplemental Agreement and the SOS Agreements, the provisions of this Supplemental Agreement shall control. It is the intent of the Parties that the provisions of Section 4 hereof shall constitute a supplement to the provisions of the SOS Agreements as and to the extent provided herein and that any future references to the SOS Agreements shall include this Supplemental Agreement as a supplement thereof as and to the extent provided in Section 4 hereof.

7. Governing Law. The interpretation, enforcement and performance of this Supplemental Agreement shall be in accordance with and controlled by the laws of the Commonwealth of Massachusetts.

8. Notices. Any notice required hereunder shall be given in accordance with Section 9 of the 2004 SOS Agreement.

9. Authority. Each signatory of this Supplemental Agreement represents and warrants that he, she or it is authorized to sign this Supplemental Agreement and to bind the Parties on whose behalf he, she or it is signing. To the extent that the consent of any Party is required in order for another Party to execute this Supplemental Agreement on its behalf, such consent or consents shall be deemed to have been given.

10. Binding Effect. All of the terms and provisions of this Supplemental Agreement are binding upon, inure to the benefit of, and are enforceable by the Parties and their respective administrators, executors, legal representatives, heirs, successors and permitted assigns.

11. Counterparts. This Supplemental Agreement may be executed in any number of counterparts and by different Parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Supplemental Agreement. Any Party delivering an executed counterpart of this Supplemental Agreement by facsimile shall also deliver an original executed counterpart of this Supplemental Agreement by overnight delivery, but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Supplemental Agreement.

12. Headings. The headings in this Supplemental Agreement are included for convenience only, and do not in any way define, limit, alter, affect or control the matters contained in this Supplemental Agreement or the paragraphs that they encaption.

13. No Waiver. No waiver or indulgence of any breach or series of breaches of this Supplemental Agreement shall be deemed a waiver of any other breach of this Supplemental Agreement or the SOS Agreements, or any of its and their respective provisions, or affect the enforceability of the remainder of this Supplemental Agreement or of the SOS Agreements.

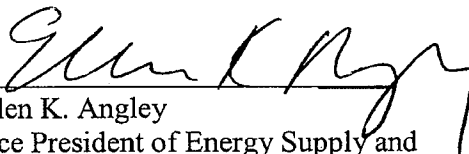
14. Consequential Damages. Notwithstanding anything otherwise contained in this Supplemental Agreement to the contrary, no Party shall be liable to any of the other Parties for any indirect, consequential, incidental, punitive or exemplary damages; provided, however, that the recovery of the full amounts provided for hereunder (plus accrued interest thereon) by CPS shall in no event constitute any indirect, consequential, incidental, punitive or exemplary damages prohibited by this Section 14.

15. Entire Agreement. Except as to the Parties' rights, duties and obligations under the SOS Agreements, this Supplemental Agreement represents the entire understanding and agreement among the Parties as to the subject matter herein and supersedes all other negotiations, understandings, and representations made by and among the Parties. All Parties participated in the drafting hereof, and any ambiguity in the terms of this Supplemental Agreement shall not be construed against any of them. This Supplemental Agreement may not be amended or modified except by a written instrument signed by all Parties hereto.

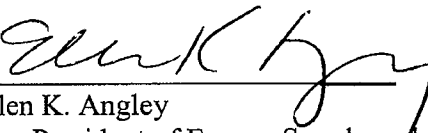
16. Severability Of Provisions And Validity Of Agreement. The provisions of this Supplemental Agreement are severable, and if any provision hereof is found to be invalid or unenforceable, then such provision shall be deemed to be deleted only to the extent that it is found to be invalid or unenforceable. Such an invalid or unenforceable provision shall not affect the validity of the remainder of this Supplemental Agreement, and the remaining provisions shall continue in full force and effect. This Supplemental Agreement shall survive the termination of any arrangements contained herein.

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this Supplemental Agreement on their behalf.

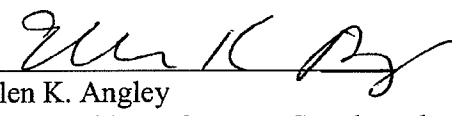
BOSTON EDISON COMPANY

By:   
Name: Ellen K. Angley  
Title: Vice President of Energy Supply and  
Transmission

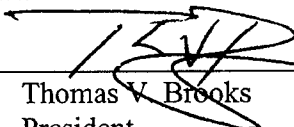
CAMBRIDGE ELECTRIC LIGHT COMPANY

By:   
Name: Ellen K. Angley  
Title: Vice President of Energy Supply and  
Transmission

COMMONWEALTH ELECTRIC COMPANY

By:   
Name: Ellen K. Angley  
Title: Vice President of Energy Supply and  
Transmission

CONSTELLATION POWER SOURCE, INC.,

By:   
Name: Thomas V. Brooks  
Title: President

LEGAL REVIEW

INTDFH DATE 6-24-04

## MASTER POWER SALES AGREEMENT

This Master Power Sales Agreement ("Master Power Agreement") is entered into as of this 15th day of January, 1998 (the "Effective Date") between Constellation Power Source, Inc., a Delaware corporation ("CPS" or "Buyer"), and Boston Edison Company, a Massachusetts Corporation ("BEC" or "Counterparty" or "Seller") (each individually a "Party", or collectively the "Parties").

### ARTICLE 1. DEFINITIONS

1.1. The following definitions and any terms defined internally in this Agreement shall apply to this Agreement:

"Business Day" means a day on which Federal Reserve member banks in New York City are open for business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. Eastern Standard (or Daylight) time.

"Buyer" means the Party to a Transaction that is obligated to purchase and receive, or cause to be received, Power during a Period of Delivery.

"Delivery Point" means the agreed point of delivery and receipt of Power in respect of any Transaction.

"Firm" means, with respect to any Transaction, that the only excuse for the failure to deliver Power by Seller or the failure to receive Power by the Buyer is Force Majeure or the other Party's failure to perform with respect to such Transaction; provided, however, that solely for purposes of Article 7.2, the term "Firm" also shall include, without limitation, any other Transaction that, by its terms, provides that it is a "firm" transaction.

"Interest Rate" means, for any date, the lesser of (a) two (2) percent over the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" and (b) the maximum rate permitted by applicable law.

"Non-Firm" means, with respect to a Transaction, that delivery or receipt of Power may be interrupted for any reason, without liability by either Party except as provided in Article 5.2.

"Penalties" means any fees, liabilities, assessments or similar charges assessed by a Transmission Provider as a result of a Party's failure to comply with its Scheduling.

"Period of Delivery" means the period of time from the date physical delivery of Power is to commence to the date physical delivery is to terminate under a Transaction.

"Power" means electric capacity and/or electric energy in the form of merchantable electricity.

"Price" means the price to be paid by Buyer to Seller for the purchase of Power, including the energy price, demand charges, transmission charges and any other charges pursuant to a Transaction.

"Quantity" means that quantity of Power that Seller agrees to make available or sell and deliver, or cause to be delivered, to Buyer, and that Buyer agrees to purchase and receive, or cause to be received, from Seller pursuant to the terms of a Transaction.



"Scheduling" or "Schedule" means the acts of Seller, Buyer and/or their designated representatives, including each Party's Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity and type of Power to be delivered on any given day or days during the Period of Delivery at a specified Delivery Point.

"Seller" means the Party to a Transaction that is obligated to sell and deliver, or cause to be delivered, Power during a Period of Delivery.

"Taxes" means any or all *ad valorem*, property, severance, generation, first use, conservation, Btu or energy, transportation, utility, gross receipts, privilege, sales, use, consumption, excise, lease, transaction, and other taxes, governmental charges, licenses, fees, permits and assessments, or increases therein, other than taxes based on net income or net worth.

"Transmission Providers" means the entity or entities transmitting or transporting the Power on behalf of Seller or Buyer to or from the Delivery Point in a particular Transaction.

## ARTICLE 2. TRANSACTIONS

2.1. Transactions. From time to time, the Parties may, but shall not be obligated to, enter into transactions for the purchase and sale of Power under which CPS shall be the Seller and Counterparty shall be the Buyer (each a "Transaction"). A Transaction shall be entered upon agreement of the Parties in writing, including an electronic means of communication, or orally. Each Party agrees not to contest or assert any defense to (i) the validity or enforceability of an oral Transaction under laws relating to whether certain agreements are to be in writing or signed by the Party to be thereby bound, or (ii) the authority of any employee of the Party to enter into a Transaction.

2.2. Governing Terms. Unless otherwise specifically agreed, each Transaction shall be governed by this Master Power Agreement. This Master Power Agreement and all Transactions shall form a single integrated agreement between the Parties (hereinafter referred to as this "Agreement"). Any inconsistency between any terms of this Master Power Agreement and any terms of any Transaction shall be resolved in favor of any terms of such Transaction. Any Transaction shall contain, to the extent applicable, the terms set forth in Exhibit A.

2.3. Confirmation. Seller shall confirm an oral Transaction, under which the Delivery Period begins or ends more than twenty-four (24) hours after the Transaction is agreed, by forwarding to Buyer by telex or telecopy within three (3) Business Days a confirmation ("Confirmation") substantially in the form of Exhibit A, which shall be executed by Buyer and returned to Seller within two (2) Business Days of Buyer's receipt of it. If Buyer objects to any term(s) of such Confirmation, Buyer shall notify Seller of such objections within two (2) Business Days of Buyer's receipt thereof, failing which Buyer shall be deemed to have accepted the terms thereof as sent. Failure by Seller to send or Buyer to return an executed Confirmation or any objection by Buyer shall not invalidate any Transaction agreed to by the Parties. However, if Seller fails to send a Confirmation within one (1) Business Day of the conversation establishing the oral agreement, Buyer may confirm such oral Transaction by forwarding to Seller within two (2) Business Days of such oral Transaction a Confirmation which shall be executed by Seller (with any objections noted thereon) and returned to Buyer within two (2) Business Days of receipt by Seller or else be deemed correct as sent.

2.4. Recording. Each Party consents to the recording of its representatives' telephone conversations without any further notice. All recordings and any other evidence may be introduced to prove any oral agreement between the Parties.

**ARTICLE 3.**  
**OBLIGATIONS AND DELIVERIES**

3.1. Seller's and Buyer's Obligations. With respect to each Transaction, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, at the Delivery Point the Quantity, and Buyer shall pay Seller the Price. Unless otherwise agreed in a Transaction, Seller shall be responsible for any Taxes, costs, losses or charges imposed on or associated with the delivery up to the Delivery Point. Buyer shall be responsible for any Taxes, costs, losses or charges imposed on or associated with the Quantity at and from the Delivery Point. Transactional taxes to be collected by Seller under law, such as the Canadian Goods and Services Tax, shall be paid by Buyer to Seller.

3.2. Transmission and Scheduling. Seller shall arrange and be responsible for transmission service to the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Providers to deliver Power to the Delivery Point. Buyer shall arrange and be responsible for transmission service at and from the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Providers to receive Power at the Delivery Point. Each Party shall designate authorized representatives to effect the Scheduling of the delivery of the Quantity.

**ARTICLE 4.**  
**PAYMENT AND NETTING**

4.1. Payment. On or before the twentieth (20th) day of each month following a month in which a delivery occurs, or if such day is not a Business Day the next Business Day, Buyer shall pay, by wire transfer, the amount set forth on an invoice to the payment address provided in Article 10.4; provided, however, that if Buyer receives such invoice on or after the tenth (10th) day of the month, Buyer shall make payment within ten (10) Business Days of the day of receipt.

4.2. Overdue Payments. Overdue payments shall accrue interest at the Interest Rate from, and including, the due date to, but excluding, the date of payment.

4.3. Billing Dispute. If Buyer, in good faith, disputes an invoice, Buyer shall immediately notify Seller of the basis for the dispute and pay the portion of such statement conceded to be correct no later than the due date. If any amount withheld under dispute by Buyer is ultimately determined to be due to Seller, it shall be paid within one (1) day of such determination along with interest accrued at the Interest Rate until the date paid. Inadvertent overpayments shall be returned by Seller upon request or deducted by Seller from subsequent payments, with interest accrued at the Interest Rate until the date paid or deducted.

4.4. Payment Netting. Payments in the same currency owing by each Party on any day shall be offset so that only the net amount shall be paid by the Party having the greater payment obligation on such day.

4.5. Transaction Netting. Two or more wholly or partially offsetting Firm Transactions having the same Delivery Period, Delivery Point and Payment Date and which have been priced and which call for delivery to commence more than two (2) days after such Transactions are entered into, where under one or more of such Transactions, one party is the Seller, and under the other such Transaction(s), the same party is the Buyer shall be netted so that a single contract shall exist under which the net amount of Power shall be delivered by the Party having the larger delivery obligation and the net payment shall be made by the Party having the greater payment obligation. Such netted contract shall replace all such offsetting Firm Transactions.

**ARTICLE 5.**  
**INTERRUPTION OF FIRM AND NON-FIRM TRANSACTIONS**

5.1. Failure to Deliver or Receive in Firm Transactions. If either Party fails to deliver or receive ("Breaching Party"), as the case may be, the quantities of Power due under any Firm Transaction, the other Party ("Other Party") shall, as promptly as practicable, give notice of such failure to the Breaching Party.

5.1.1. The Other Party shall be entitled to receive from the Breaching Party an amount calculated as follows, unless excused by Force Majeure or the Other Party's failure to perform:

(i) if Seller fails to deliver all or part of the Power that the Parties have agreed to Schedule pursuant to a Firm Transaction, Seller shall pay Buyer, on the date payment would otherwise be due to Seller, an amount for each MWh of such deficiency equal to the positive difference, if any, obtained by subtracting the per unit Price from the per unit Replacement Price;

(ii) if Buyer fails to take delivery of the minimum requirement, if any, of the Quantity pursuant to a Firm Transaction or amounts of Power that the Parties agreed to Schedule pursuant to a Firm Transaction, Buyer shall pay Seller, on the date payment would otherwise be due, an amount for each MWh of such deficiency equal to the positive difference, if any, obtained by subtracting the per unit Sales Price from the per unit Price.

5.1.2. "Replacement Price" means the price at which Buyer, acting in a commercially reasonable manner, purchases substitute Power for the Power not delivered by Seller, plus any additional transmission charges incurred by Buyer to the Delivery Point; or, absent any such purchase, the market price for such quantity at such Delivery Point during the applicable Period of Delivery as determined by Buyer in a commercially reasonable manner; *provided, however*, in no event shall the Replacement Price include any Penalties, ratcheted demand or similar charges or any stranded costs. "Sales Price" means the price at which Seller, acting in a commercially reasonable manner, resells, or if not resold would have been able to resell, the Power not received by Buyer, reduced by additional transmission charges, if any (including, without limitation, charges for any applicable ancillary services), incurred by Seller to effect such resale.

5.2. Failure to Deliver or Receive in Non-Firm Transactions. A Party shall be excused from delivering or receiving the Quantity, in whole or in part, in a Non-Firm Transaction for any reason without liability if it gives the other Party notice of its decision to interrupt the Scheduled delivery or receipt of Power, which notice is sufficiently timely to allow the Party receiving such notice to change Scheduling and avoid incurring any Penalties. If timely notice of any interruption of Scheduled delivery or receipt is not provided, the Party causing such interruption shall be obligated to the other Party for all Penalties resulting therefrom.

**ARTICLE 6.**  
**FORCE MAJEURE**

6.1. Performance Excused. If either Party is rendered unable by an event of Force Majeure to carry out, in whole or part, its obligations under a Firm Transaction, then, during the pendency of such Force Majeure but for no longer period, the Party affected by the event (other than the obligation to make payments then due or becoming due with respect to performance which occurred prior to the event) shall be relieved of its obligations insofar as they are affected by Force Majeure but for no longer period. The Party affected by an event of Force Majeure shall provide the other Party with written notice setting forth the full details thereof as soon as practicable after the occurrence of such event and shall take all reasonable measures to mitigate or minimize the effects of such event of Force Majeure; *provided, however*, that this provision shall not require Seller to deliver, or Buyer to receive, Power at points other than the Delivery Point.

6.2 Definition. Force Majeure means (with respect to Firm Transactions) an event not anticipated as of the Effective Date, which is not within the reasonable control of the Party (or in the case of third party obligations or facilities, the third party) claiming suspension (the "Claiming Party"), and which, by the exercise of due diligence, the Claiming Party, or third party, is unable to overcome or avoid or cause to be avoided. Force Majeure includes, but is not restricted to: acts of God; fire; civil disturbance; labor dispute, labor or material shortage; sabotage; action or restraint by court order or public or governmental authority (so long as the Claiming Party has not applied for or assisted in the application for, and has opposed where and to the extent reasonable, such government action); *provided, however,* that an event of Force Majeure shall not include (i) the loss of Buyer's markets; (ii) Buyer's inability economically to use or resell Power purchased hereunder; (iii) the loss or failure of Seller's Power supply; (iv) Seller's ability to sell Power to a market at a more advantageous price. Interruption by a Transmission Provider shall not be deemed to be an event of Force Majeure unless (i) the Party contracting with such Transmission Provider shall have made arrangements with such Transmission Provider for the firm transmission, as defined under the Transmission Provider's tariff, of Power to be delivered or received hereunder and (ii) such interruption is due to force majeure as defined under the Transmission Provider's tariff.

## ARTICLE 7. NON-PERFORMANCE

7.1. Events of Default. An "Event of Default" shall mean, with respect to a Counterparty, the occurrence of any of the following:

(i) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within one (1) Business Day after written notice of such failure is given by CPS and provided the payment is not the subject of a good faith dispute as described in Article 4;

(ii) any representation or warranty made by Counterparty herein shall when made or when deemed to be repeated prove to be false or misleading in any material respect;

(iii) the failure of Counterparty to perform any covenant set forth in this Agreement (other than the events that are otherwise specifically covered in this Article 7 as a separate Event of Default, or its obligations to deliver or receive any Power, the remedy for which is provided in Article 5 in which event timely payment of damages set forth in Article 5 constitutes performance) and such failure is not excused by Force Majeure or cured within two (2) Business Days after written notice thereof to Counterparty;

(iv) Counterparty shall be subject to a Bankruptcy Proceeding ("Bankruptcy Proceeding" means with respect to Counterparty, Counterparty (a) files a petition or otherwise commences a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or proceeding commenced against it, (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes bankrupt or insolvent (however evidenced), (d) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (e) is unable to pay its debts as they fall due);

(v) the failure to provide adequate assurance of its ability to perform all of its outstanding obligations to CPS under this Agreement, any Transaction or otherwise within a period not to exceed 48 hours (but at least one Business Day) of a demand therefor when CPS has reasonable grounds for insecurity.

7.2. Remedies upon an Event of Default. After the occurrence of an Event of Default with respect to Counterparty, CPS shall have the right, without prior notice, to liquidate and terminate any or all Transactions then outstanding between the parties (except to the extent that in the good faith opinion of CPS certain of such Transactions may not be closed out and liquidated under applicable law) at any time and from time to time, and shall calculate, in a commercially reasonable manner, a Settlement Amount for each such Transaction that is a Firm Transaction as of the

time of its termination or as soon thereafter as is reasonably practicable and shall net such Settlement Amounts in the manner provided for in Article 7.2.2.

7.2.1. "Settlement Amount" shall mean, with respect to a Firm Transaction and CPS, the losses and costs (or gains), expressed in U.S. Dollars, which CPS incurs as a result of the liquidation, including, but not limited to, losses and costs (or gains) based upon the then current replacement value of such Firm Transaction together with, at CPS' option, but without duplication, all losses and costs which CPS incurs as a result of maintaining, terminating, obtaining or re-establishing any hedge or related trading positions. The Settlement Amount shall be due to or from CPS as appropriate. In calculating a Settlement Amount, CPS shall discount to present value (in a commercially reasonable manner based on the Prime Rate for the applicable period) any amount which would otherwise have been due at a later date and shall add interest at the Prime Rate to any amount due prior to the date of the calculation. "Prime Rate" shall mean the prime rate of interest as published from time to time under "Money Rates" by The Wall Street Journal.

7.2.2. CPS shall set off (i) all such Settlement Amounts that are due to Counterparty, plus any Margin then available to CPS, plus (at CPS' election) any or all other amounts due to Counterparty under the Agreement against (ii) all such Settlement Amounts that are due to CPS, plus any Margin then available to Counterparty, plus (at CPS' election) any or all other amounts due to CPS under the Agreement, so that all such amounts shall be netted to a single liquidated amount (the "Termination Payment") payable by one Party to the other. "Margin" shall mean cash, securities or other property held by or due from one Party to guarantee or secure obligations of the other Party under the Agreement.

7.2.3. Notice that a liquidation pursuant to this Article 7.2 has occurred shall be given by CPS to Counterparty before the close of business on the Business Day following such liquidation, provided that failure to give such notice shall not affect the validity or enforceability of the liquidation or give rise to any claim by Counterparty against CPS. The notice shall specify the amount of the Termination Payment and whether it is owed by or to Counterparty. The Termination Payment shall be made by the Party that owes it on the second Business Day after such notice is given.

7.2.4. Notwithstanding any contrary provision of this Article 7.2, where an Event of Default specified in Article 7.1(iv)(a) or (d) is governed by a system of laws which does not permit the liquidation of Transactions to take place upon or after the occurrence of the relevant Event of Default in accordance with the other terms of this Article 7.2, the liquidation of all outstanding Transactions shall automatically take place upon the occurrence of such an Event of Default as of a time immediately preceding the occurrence of such Event of Default and, upon the occurrence of any such automatic liquidation, Counterparty shall indemnify CPS on demand against all expense, loss, damage or liability that CPS may incur in respect of the Agreement as a consequence of movements in Power prices or other relevant prices or rates between the date of such automatic liquidation and the Business Day on which CPS first becomes aware that such automatic liquidation has occurred.

7.2.5. If Counterparty disputes CPS' calculation of the Termination Payment, in whole or in part, Counterparty shall, within two (2) Business Days of receipt of CPS' calculation of the Termination Payment, provide to CPS a detailed written explanation of the basis for such dispute and, if the Termination Payment is due from Counterparty, shall promptly pay to CPS such portion thereof as is conceded to be correct. If the Parties cannot resolve such dispute within three (3) Business Days of CPS' receipt of Counterparty's written explanation, then Counterparty may submit such dispute to arbitration in accordance with the arbitration procedures set forth in Article 9 hereof; provided, however, that if the Termination Payment is due from Counterparty, Counterparty shall first transfer collateral (of a type and in a form acceptable to CPS) to CPS in an amount equal to the disputed and unpaid portion of the Termination Payment. Any payment that is due as a result of the arbitrator's award shall be paid by the Party that owes it within two (2) Business Days after the award is rendered.

7.3 Setoffs. Without limiting its rights under this Article 7 or otherwise, after an Event of Default, CPS may from time to time set off any or all amounts which Counterparty owes to it (whether under the Agreement or otherwise and

whether or not then due) against any or all amounts which it owes to Counterparty (whether under the Agreement or otherwise and whether or not then due), provided that any amount not then due which is included in such setoff shall be discounted to present value (in the manner specified in Article 7.2.1) as at the time of setoff (to take account of the period between the date of setoff and the date on which such amount would have otherwise been due).

7.3.1. Notwithstanding any other provision of this Agreement, after the occurrence of an Event of Default, or an event which, with the giving of notice or the passage of time or both, would constitute an Event of Default, with respect to Counterparty, CPS shall have the right to suspend performance under any or all Transactions.

#### 7.4. Other Terminating Events.

7.4.1. If performance by either Party under this Agreement or in respect of any Transaction becomes subject to regulation of any kind whatsoever under any law, rule, regulation, order or the like, including any change by the Federal Energy Regulatory Commission regarding a Party's authority to sell wholesale power at market-based rates, to a greater or different extent than that existing on the Effective Date and such regulation either (i) renders this Agreement illegal or unenforceable, or (ii) would render performance by a Party of some but not all outstanding Transactions (the "Affected Transactions") illegal, unenforceable or commercially impracticable, or (iii) materially adversely affects the business of a Party with respect to its financial position or otherwise, then CPS may terminate and liquidate any or all Transactions ("Early Termination Date") in the manner contemplated by Article 7.2 above, which notice shall specify the basis for declaring such Early Termination Date and (in the circumstances described in clause (ii) above) identify which Transactions are Affected Transactions. If an Early Termination Date is declared under this Article 7.4.1, both Parties shall calculate their respective gains, losses or costs in respect of terminated Transactions as provided in Article 7.2, and endeavor in good faith to agree upon the Termination Payment payable by either Party, provided, however, that if no such agreement is reached within two Business Days after CPS' declaration of the Early Termination Date, CPS shall determine the Termination Payment on the basis of the average of quotations obtained by CPS from at least two, but not more than four, leading dealers selected by CPS in a commercially reasonable manner. Only the Affected Transactions shall be terminated on the Early Termination Date under the circumstances described in clause (ii) above. All other Transactions shall remain unaffected as if no Early Termination Date had been declared.

### ARTICLE 8. TITLE TRANSFER; LIABILITY

8.1. Title and Risk of Loss. Title to and risk of loss related to the Quantity shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Quantity free and clear of all liens, claims and encumbrances arising prior to the Delivery Point.

8.2. Indemnity. Each Party shall indemnify, defend and hold harmless the other Party from any Claims arising from any act or incident occurring during the period when control and title to Power is vested, as between the Parties as provided in Article 8.1, in the indemnifying Party. "Claims" means all claims or actions, threatened or filed and, whether groundless, false or fraudulent, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys' fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

8.3. Taxes. Each Party shall indemnify, defend and hold harmless the other Party against any Taxes for which such Party is responsible under Article 3.1.

8.4. Limitation of Remedies, Liability and Damages. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL

BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE. IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE, IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

8.5. Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

8.6. UCC. Except as otherwise provided for herein, the provisions of the Uniform Commercial Code ("UCC") of the state whose laws shall govern this Agreement shall be deemed to apply to all Transactions and Power shall be deemed to be a "good" for purposes of the UCC. EXCEPT AS EXPRESSLY SET FORTH HEREIN, SELLER EXPRESSLY NEGATES ANY OTHER REPRESENTATION OR WARRANTY, INCLUDING WITHOUT LIMITATION WRITTEN OR ORAL, REPRESENTATION OR WARRANTY WITH RESPECT TO FITNESS FOR ANY PARTICULAR PURPOSE.

## ARTICLE 9. LAW; DISPUTE RESOLUTION

9.1 Governing Law and Jurisdiction. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF MARYLAND, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. Except as provided in Article 9.2, all disputes hereunder or relating hereto shall be resolved in the Federal or State courts of Maryland located in the City of Baltimore and each party hereby irrevocably submits to the *in personam* jurisdiction of such courts. Each Party herein waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement or any Transaction.

9.2. Arbitration Proceedings. Any dispute or need of interpretation arising out of this Agreement pertaining to the calculation of a Termination Payment or a payment required pursuant to Article 5 may be submitted upon request of either Party to binding arbitration by one arbitrator who has not previously been employed by either Party, and does not have a direct or indirect interest in either Party or the subject matter of the arbitration. Such arbitrator shall either be as mutually agreed by the Parties within thirty (30) days after written notice from either Party requesting arbitration, or failing agreement, shall be selected under the expedited rules of the American Arbitration Association (the "AAA"). Such arbitration shall be held in alternating locations of the home offices of the Parties, commencing with CPS's home office, or in any other mutually agreed upon location. The rules of the AAA shall apply to the extent not inconsistent with the rules herein specified. Either Party may initiate arbitration by written notice to the other Party and the arbitration shall be conducted according to the following: (a) not later than seven (7) days prior to the hearing date set by the arbitrator each Party shall submit a brief with a single proposal for settlement, (b) the hearing shall be conducted

on a confidential basis without continuance or adjournment, (c) the arbitrator shall be limited to selecting only one of the two proposals submitted by the Parties, (d) each Party shall divide equally the cost of the arbitrator and the hearing and each Party shall be responsible for its own expenses and those of its counsel and representatives and (e) evidence concerning the financial position or organizational make-up of the Parties, any offer made or the details of any negotiation prior to arbitration and the cost to the Parties of their representatives and counsel shall not be permissible. Each Party agrees that it will not bring a lawsuit concerning any dispute covered by this arbitration provision. Any monetary award of the arbitrator may be enforced by the Party in whose favor such monetary award is made in any court of competent jurisdiction.

#### ARTICLE 10. MISCELLANEOUS

10.1. Term of Agreement. The term of this Master Power Agreement shall commence on the Effective Date and shall remain in effect until terminated by either Party upon (thirty) 30 days' prior written notice; *provided, however*, that such termination shall not affect or excuse the performance of either Party under any provision of this Master Power Agreement that by its terms survives any such termination, and, *provided further*, that this Master Power Agreement and any other documents executed and delivered hereunder shall remain in effect with respect to any Transaction(s) entered into prior to the effective date of such termination until both Parties have fulfilled all of their obligations with respect to such Transaction(s).

10.2. Representations and Warranties. On the Effective Date and the date of entering into each Transaction, each Party represents and warrants to the other Party that: (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, (ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and any other documentation relating to this Agreement or such Transaction to which it is a party, (iii) the execution, delivery and performance of this Agreement and any other documentation relating to this Agreement or such Transaction to which it is a party are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it, (iv) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, (v) there are no Bankruptcy Proceedings pending or being contemplated by it or, to its knowledge, threatened against it, (vi) there is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement or any other document relating to this Agreement to which it is a party, (vii) no Event of Default or event which, absent a cure, with the giving of notice or lapse of time, or both, would constitute an Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any other document relating to this Agreement or any Transaction, and (viii) it is acting for its own account, has made its own independent decision to enter into each Transaction and as to whether each such Transaction is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of each such Transaction.

10.3. Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party; *provided, however*, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is not materially different than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party; *provided, however*, that in each such case, any such assignee shall agree to in writing be bound by the terms and conditions hereof.



10.4. Notices. All notices, requests, statements or payments shall be made as specified below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close in which case it shall be deemed received at the close of the next Business Day). Notice by overnight mail or courier shall be deemed to have been received two Business Days after it was sent. A Party may change its addresses by providing notice of same in accordance herewith:

to CPS:

NOTICES & CORRESPONDENCE:

Constellation Power Source, Inc.  
David M. Perlman, Esq.  
39 W. Lexington Street, Room 1120  
Baltimore, Maryland 21201

FAX No.: (410) 234-7822  
Phone No.: (410) 234-7830

INVOICES:

Attn.: Stuart Rubenstein  
FAX No.: (410) 234-7822  
Phone No.: (410) 234-7896

SCHEDULING:

Attn: Stuart Rubenstein  
FAX No.: (410) 234-7822  
Phone No. (410) 234-7896

PAYMENTS:

Federal Wire Transfer  
First National Bank of Maryland  
ABA Routing #052000113  
Account: Constellation Power Source, Inc.  
Account #: 191-9007-8  
Ref: \_\_\_\_\_

CREDIT AND COLLECTIONS:

John R. Collins  
FAX No. (410) 234-7822  
Phone No.: (410) 234-7842

To Boston Edison Company:

NOTICES & CORRESPONDENCE:

800 Boylston Street  
P1704  
Attn: John Campanella  
FAX No.: (617) 424-3407  
Phone No.: (617) 424-2172

PAYMENTS:

BankBoston  
Boston, Mass.  
ABA Routing # 011-000-390  
Account: 264-60002

INVOICES:

Attn.: Nepool Relations & Contract Administration  
FAX No.: (617) 424-3407  
Phone No.: (617) 424-3877

10.5. General. This Master Power Agreement (including the Exhibit hereto) and each Transaction constitute the entire agreement between the Parties relating to the subject matter contemplated by this Agreement. The Agreement shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Master Power Agreement shall be enforceable unless reduced to writing and executed by both Parties. This Master Power Agreement shall not impart any rights enforceable by any third-party (other than a permitted successor or assignee bound to this Agreement). No waiver by a Party of any default by the other Party shall be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful obligations that arise under this Agreement. The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for six years.

10.6. Advisor. Goldman Sachs Power LLC ("GSP") is the exclusive advisor to CPS and not a principal of CPS. From time to time, CPS may designate one or more employees of GSP as CPS's agent for purposes of entering into Transactions with Counterparty. CPS shall be solely responsible for any and all obligations and liabilities associated with such Transactions. Neither GSP, Goldman, Sachs & Co. nor J. Aron & Company, nor any of their affiliates, has any responsibility for, or liability with respect to any Transactions or liabilities of CPS under this Agreement or otherwise.

10.7. Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If requested, a Party shall provide to the other Party statements evidencing the quantities of Power delivered at the Delivery Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; *provided, however*, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of two (2) years from the rendition thereof.

10.8. Credit. Any credit agreement between the Parties shall become part of this Master Power Agreement and any Transactions hereunder.

The Parties have executed this Master Power Agreement in multiple counterparts to be construed as one effective as of the Effective Date.

BOSTON EDISON COMPANY

By:

  
Douglas S. Horan

Title: Senior Vice President

CONSTELLATION POWER SOURCE, INC.

By:

  
John R. Collins

Title: Vice President & Treasurer

EXHIBIT "A"  
CONFIRMATION LETTER

DATE:

TO:

This letter shall confirm our agreed transaction (the "Transaction") as follows:

Trade Date: \_\_\_\_\_, 199

Buyer: \_\_\_\_\_

Seller: \_\_\_\_\_

Delivery Point: \_\_\_\_\_

Period of Delivery: \_\_\_\_\_

Quantity Per Hour: \_\_\_\_\_ MW/H

Total Quantity: \_\_\_\_\_

Type: [firm energy] [non-firm energy] [capacity]

Price: [energy - \$ \_\_\_\_ per mwh]; [demand charge - per mwm]

Scheduling: \_\_\_\_\_

Other Terms: \_\_\_\_\_

This Transaction shall be governed by the Master Power Sales Agreement, dated as of January 15, 1998, (the "Master Power Agreement") between CPS and Boston Edison Company, which Master Power Agreement is incorporated herein by reference.

Please confirm that the terms stated herein accurately reflect the agreement between Boston Edison Company and CPS by returning an executed copy of this Confirmation Letter by facsimile to CPS at 410-234-7822.

BOSTON EDISON COMPANY

CONSTELLATION POWER SOURCE, INC.

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Attachment AG-1-4(d)

**Constellation  
Power Source™**

39 W. Lexington Street • 11th Floor • Baltimore, Maryland 21201 • Fax 410-234-7822

FROM: CONSTELLATION POWER SOURCE  
TO: BOSTON EDISON COMPANY  
ATTN: BOB MARTIN  
CC: NATSOURCE, INC.  
ATTN: GREG WOYSHNER

Mon 9Dec02 02:04:48 pm

## CONFIRMATION AGREEMENT

This will confirm the verbal agreement reached on 22Nov02 between BOSTON EDISON COMPANY ("Counterparty") and Constellation Power Source, Inc. ("CPS") (each individually a "Party" and collectively the "Parties") regarding a power purchase and sale transaction (the "Agreement") on the following terms and conditions:

1. Commercial Terms. The "Commercial Terms" of this transaction are as follows:

REF: PWS675S

Trade Date : 22Nov02

Buyer: BOSTON EDISON COMPANY  
800 BOYLSTON STREET  
BOSTON, MA 02199

Seller: CONSTELLATION POWER SOURCE, INC.  
111 MARKET PLACE SUITE 500  
BALTIMORE, MD 21202

Delivery Point: NEPOOL PTF

Type of Transaction: Installed Capability.

Delivery Period: December 1, 2002 - December 31, 2002 (inclusive)

Hourly Quantity: 41 MW

Daily Quantity: 984 ~~KW~~ <sup>MW</sup> per day

Total Quantity: 30,504 MWH for the delivery period

Price : USD 0.40 per KW - month

Other Terms : 7x24 (All Days, All Hours, including NERC holidays)

Scheduling in accordance with ISO-NE market rules and procedures by 12:00 EPT one Business Day prior to the delivery of electricity, unless otherwise mutually agreed to between the Parties.

## 2. Performance, Title & Delivery.

Subject to the terms of this Agreement during the applicable Delivery Period, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, at the Delivery Point the Daily Quantity, and Buyer shall pay Seller the Contract Price therefore. Seller shall be responsible for any costs or charges imposed on or liabilities and risks of loss associated with the possession, transmission and delivery of the Daily Quantity up to the Delivery Point and Buyer shall be responsible for any costs or charges imposed on or liabilities and risks associated with possession of and transmission of the Contract Quantity at and from the Delivery Point. Seller warrants good and marketable title to all energy delivered and agrees to indemnify and hold harmless Buyer from all claims, liabilities, taxes, and damages arising in relation or respect to the energy prior to the Delivery Point. Buyer agrees to indemnify and hold harmless Seller from all claims, liabilities, taxes, and damages arising in relation or respect to the energy at and from the Delivery Point.

## 3. Recordings.

Each Party consents to the recording of its representatives' telephone conversations without any further notice. All recordings and any other evidence may be introduced to prove any oral agreement between the Parties.

## 4. Liability For Non-Performance.

(a) Unless and to the extent prevented from doing so by an event of Force Majeure (as defined herein) and without its fault or negligence, if CONSTELLATION POWER SOURCE, INC. fails to deliver the Daily Quantity to BOSTON EDISON COMPANY in accordance with the terms and conditions of this Agreement, CONSTELLATION POWER SOURCE, INC. shall pay BOSTON EDISON COMPANY, on the date payment would otherwise be due to CONSTELLATION POWER SOURCE, INC. an amount equal to the product of (i) the deficiency in the Daily Quantity delivered and (ii) the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price. "Replacement Price" means the price at which BOSTON EDISON COMPANY, acting in a commercially reasonable manner, substitutes replacement energy for the Daily Quantity not delivered by CONSTELLATION POWER SOURCE, INC., plus additional transmission costs,

if any, incurred by BOSTON EDISON COMPANY as a consequence of CONSTELLATION POWER SOURCE, INC. failure to perform, less any costs BOSTON EDISON COMPANY avoids as a consequence of CONSTELLATION POWER SOURCE, INC. failure to perform; provided, however, in no event shall the Replacement Price include any penalties, ratcheted demand or similar charges or any stranded costs.

(b) Unless and to the extent prevented from doing so by an event of Force Majeure (as defined herein) and without its fault or negligence, if BOSTON EDISON COMPANY fails to receive the Daily Quantity from CONSTELLATION POWER SOURCE, INC. in accordance with the terms and conditions of this Agreement, BOSTON EDISON COMPANY shall pay CONSTELLATION POWER SOURCE, INC., on the date payment would otherwise be due from BOSTON EDISON COMPANY, an amount equal to the product of (i) the deficiency in the Daily Quantity received and (ii) the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price. "Sales Price" means the price at which CONSTELLATION POWER SOURCE, INC., acting in a commercially reasonable manner, resells the energy not received by BOSTON EDISON COMPANY less additional transmission costs, if any, incurred by CONSTELLATION POWER SOURCE, INC. as a consequence of BOSTON EDISON COMPANY failure to perform, less any costs CONSTELLATION POWER SOURCE, INC. avoids as a consequence of BOSTON EDISON COMPANY failure to perform; or, absent a resale, the market price for such quantity of energy for delivery at the Delivery Point during the contemplated Delivery Period as determined by CONSTELLATION POWER SOURCE, INC. in a commercially reasonable manner.

(c) A Party in a Transaction that is designated non-firm shall be excused from delivering or receiving the Daily Quantity, in whole or in part, for any reason and without liability, if it gives the other Party notice of its decision to interrupt the scheduled delivery or receipt of the Daily Quantity, which notice is sufficiently timely to allow the Party receiving such notice a reasonable opportunity to change its scheduling and thus avoid incurring any fees, liabilities, assessments or similar charges assessed by a transmission provider as a result of a Party's failure to comply with its scheduling ("Penalties"). If timely notice of any interruption of scheduled deliveries or receipts is not provided, the Party causing such interruption shall be obligated to the other Party for all Penalties resulting therefrom.

(d) Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

## 5. Billing and Payment.

Seller shall transmit to Buyer in the month following delivery a statement setting forth the total amount due, including the amount due for energy delivered by Seller during such month, calculated as the product of the Price multiplied by the Daily Quantity for each day during the Delivery Period in which energy is delivered by Seller, as well as any other charges due Seller, including liquidated damages, interest, or payments or credits between the Parties relating to prior or contemporaneous transactions or previous deliveries under this Agreement, and the amounts due to Seller from Buyer therefor. Absent data providing actual quantities delivered and received, billing and payment will be based on scheduled quantities, or as otherwise provided in Section 1, with adjustments made in the next billing cycle to reflect any deviations between estimates and actual deliveries. On or before the twentieth (20th) day of each month, Buyer shall pay, by wire transfer in accordance with the Notices Section hereof, the amount set forth on such statement; provided, however, that if Buyer receives such statement on or after the tenth (10th) day of the month, Buyer shall make payment within ten (10) Business Days (as defined in this Section) of the day of receipt. Overdue payments shall accrue interest from, and including, the due date to, but excluding, the date of payment, at two (2) percent over the per annum prime lending rate as may from time to time be published in The Wall Street Journal under "Money Rates" (the "Interest Rate"); provided, however, that the Interest Rate shall never exceed the maximum rate permitted by applicable law. If Buyer, in good faith, disputes the accuracy of a statement, Buyer shall provide a written explanation of the basis for the dispute and pay the portion of such statement conceded to be correct no later than the due date. If any amount withheld under dispute by Buyer is ultimately determined to be due to Seller, it shall be paid within ten (10) days of such determination, along with interest accrued at the Interest Rate until the date paid. Inadvertent overpayments shall be returned by Seller upon request or deducted by Seller from subsequent statements. "Business Day" means a day on which Federal Reserve member banks in New York City are open for business and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. Eastern Standard (or Daylight) time.

#### 6. Netting.

If Buyer and Seller are each required to pay amounts in respect of purchases/sales hereunder or under any other forward contract between the Parties on the same day, then, upon notice from one Party to the other, such amounts with respect to each Party shall be aggregated and the Parties shall discharge their obligations to pay through netting, in which case the Party, if any, owing the greater aggregate amount shall pay to the other Party the difference between the amounts owed.

#### 7. Force Majeure.

Force Majeure means an event not anticipated as of the Trade Date, which is not within the reasonable control of the Party (or in the case of third party obligations or

facilities, the third party) claiming suspension (the "Claiming Party"), and which, by the exercise of due diligence, the Claiming Party, or third party, is unable to overcome or avoid or cause to be avoided. Force Majeure includes, but is not restricted to: acts of God; fire; civil disturbance; labor dispute; sabotage; action or restraint by court order or public or governmental authority (so long as the Claiming Party has not applied for or assisted in the application for, and has opposed where and to the extent reasonable, such government action); provided however, that an event of Force Majeure shall not include (i) the loss of Buyers markets; (ii) Buyer's inability economically to use or resell electric power purchased hereunder; (iii) the loss or failure of Seller's energy supply; (iv) Seller's ability to sell energy to a market at a more advantageous price, or (v) Buyer's ability to buy energy at a more advantageous price. Interruption by a transmission provider shall not be deemed to be an event of Force Majeure unless (i) the Party contracting with such transmission provider shall have made arrangements with such transmission provider for the firm transmission, as defined under the transmission provider's tariff, of energy to be delivered or received hereunder and (ii) such interruption is due to Force Majeure as defined under the transmission provider's tariff.

8. Default.

(a) An "Event of Default" shall mean, with respect to a Party ("Defaulting Party"), the occurrence of any of the following, notwithstanding any other provision of this Agreement or any other Agreement between the Parties ("Other Agreement") to the contrary: (i) the failure to make, when due, any payment due and payable under this Agreement or any Other Agreement, if such failure is not remedied within one (1) Business Day after written notice thereof is given by the other Party; (ii) any representation or warranty made by the Defaulting Party herein or in any Other Agreement shall prove to be false or misleading in any material respect; (iii) the failure of the Defaulting Party to perform any covenant set forth in this Agreement or any Other Agreement (other than its obligations to deliver or receive energy, the remedy for which is provided in this Section hereof or otherwise in any Other Agreement) and such failure is not cured within two (2) Business Days after written notice thereof to the Defaulting Party; (iv) the filing of a petition or other commencement or authorization by the Defaulting Party of the commencement of a proceeding under any bankruptcy or similar law for the protection of creditors or the filing of any such petition or commencement of any such proceeding against the Defaulting Party; (v) the Defaulting Party otherwise becomes bankrupt or insolvent, however evidenced; (vi) the Defaulting Party becomes unable to pay its debts as they fall due; or (vii) the failure of the Non-Defaulting Party to provide adequate assurance of its ability to perform all of its outstanding obligations to the other Party under this Agreement or any Other Agreement, within a period not to exceed 48 hours (but at least one Business Day) of a demand therefor when the other Party has reasonable grounds for



insecurity.

(b) After the occurrence of an Event of Default with respect to a Defaulting Party, the other Party shall have the right, without prior notice, immediately and at any time thereafter, to liquidate and terminate this Agreement and any Other Agreement then outstanding between the Parties by closing out such forward contract at its market value at such time (so that a settlement payment in an amount equal to the difference, if any, between such then prevailing market price and the price specified in such contract shall be due to the Buyer under that forward contract if such market price is greater than such contract price and with such settlement payment being due to the Seller under that forward contract if the opposite is the case) and by setting off all market damages so determined and payable by each of the Parties to the other, whereupon all such amounts shall be aggregated or netted to a single liquidated amount, payable within one Business Day by the Party owing the greater such amount to the other.

(c) The Defaulting Party shall indemnify and hold the other Party harmless from all reasonable costs and expenses, including reasonable attorney fees, incurred in the exercise of its remedies hereunder.

9. Limitation of Remedies, Liability and Damages.

THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, TO BE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ESTIMATED HARM OR LOSS.

10. Audit.

Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. This Section will survive any termination of the Agreement for a period of two (2) years from the date of such termination for the

purpose of such statement and payment objections.

11. Representations and Warranties.

Each Party represents and warrants to the other Party that: (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; (ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and any other documentation relating to this Agreement to which it is a party; (iii) the execution, delivery and performance of this Agreement and any other documentation relating to this Agreement to which it is a party are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it; (iv) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; (v) there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it; (vi) there is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement or any other document relating to this Agreement to which it is a party; and (vii) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgement, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement.

12. Master Document.

If the Parties execute a master enabling agreement (hereinafter the "Master Document") governing the purchase and sale of power, from the effective date of the Master Document, the terms and conditions herein with the exception of the Commercial Terms shall cease to govern or apply to the Agreement, and the terms of the Master Document shall thereafter govern.

13. Governing Law.

THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

14. Notices.

All notices, requests, statements or payments shall be made as specified below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form. Notice shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close in which case it shall be deemed received at the close of the next Business Day). Notice by overnight mail or overnight courier shall be deemed to have been received one (1) Business Day after it was sent. A Party may change its addresses by providing

notice of same in accordance herewith:

to CPS:

NOTICES, INVOICES, SCHEDULING  
& CORRESPONDENCE:

Constellation Power Source, Inc.  
111 Market Place  
Suite 500  
Baltimore Md. 21202  
FAX No.: (410) 468-3540  
Phone No.: (410) 468-3530  
Attn : Stu Rubenstein

PAYMENTS:

AllFirst Bank  
Acct : 191-9007-8  
ABA Routing # 052000113  
Reference :  
Confirmation: John Collins  
Credit and Collections

To Counterparty:

NOTICES & CORRESPONDENCE:

\_\_\_\_\_  
\_\_\_\_\_  
Attn.: \_\_\_\_\_  
FAX No.: ( ) - \_\_\_\_\_  
Phone No.: ( ) - \_\_\_\_\_

PAYMENTS:

\_\_\_\_\_  
\_\_\_\_\_  
ABA Routing # \_\_\_\_\_  
Confirmation: \_\_\_\_\_  
Credit and Collections  
( ) - \_\_\_\_\_

INVOICES:

Attn.: \_\_\_\_\_

FAX No.: ( ) - \_\_\_\_\_  
Phone No.: ( ) - \_\_\_\_\_

SCHEDULING:

Attn.: \_\_\_\_\_

FAX No.: ( ) - \_\_\_\_\_  
Phone No.: ( ) - \_\_\_\_\_

#### 15. Assignment.

Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is comparable to or higher than that of such Party, or (iii) transfer or assigns this Agreement to any person or entity succeeding to all substantially all of the assets of such Party. In each such case, any assignee shall agree to in writing be bound by the terms and conditions hereof.

#### 16. General.

No amendment or modifications to this Agreement shall be enforceable unless reduced to writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third-party (other than a permitted successor or assignee bound to this Agreement). No waiver by a Party of any default by the other Party shall be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful

obligations that arise under this Agreement.

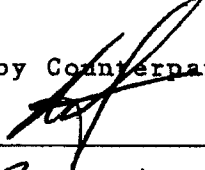
Please execute below as indicated and return to us by fax.

Regards,

Constellation Power Source, Inc.

  
CHRISTOPHER PLANTE  
TRADER

Agreed by Counterparty:

  
By: Robert H. Martin

Title: Director, Electric Energy Supply

.ARON. T.OFAX. C.PWS675S. .ENDARON.

Information Request AG-1-5

Please provide a full explanation of why NSTAR and Constellation chose pricing based on NYMEX last day settlement price for each month. Please provide copies of all documents relating to the process of setting the commodity price. Include in this response all evaluations, studies, reports, correspondence, e-mails, notes, presentation materials, and work papers related to the commodity price.

Response

NSTAR Gas Company (the "Company") wanted to choose a price index that would not reflect the volatility and the lack of liquidity that has been traditionally associated with Waddington. The Company's RFP suggested that Bidders offer prices based on NYMEX, AECO, Dawn, Chicago, or any other liquid trading point they wanted to consider. Most bidders offered prices based on these particular points. The NYMEX last day settlement price is a very liquid pricing point and is an appropriate index for baseload supplies. The response to information request AG-1-1 provides the workpapers related to the evaluation of the various bids.